

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-736-2016

Reserved on : 17.11.2022

Pronounced on : 23.11.2022

Makhan Chand

... Appellant

Versus

State of Punjab and others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. K.S. Sidhu, Advocate for the appellant.

Mr. Rohit Ahuja, Deputy Advocate General, Punjab.

G.S. Sandhawalia, J.

Present Letters Patent Appeal is directed against the order of learned Single Judge dated 27.01.2016 passed in **CWP No.10800 of 1993** '**Ex-Constable Makhan Chand Vs. State of Punjab and others**'. The learned Single Judge dismissed the said writ petition primarily on the ground that departmental proceedings had been initiated and the dismissal order had been passed on account of the inquiry proceedings and, therefore, there was no reason as such to take a different view. Accordingly, keeping in view the fact that the Court is not sitting in appeal over the findings recorded in the departmental inquiry, the order of dismissal of the appellant was not interfered with.

2. The appellant/writ petitioner had challenged as many as six orders and in the first set of proceedings the issue was pertaining to the factum of leave of three days and the resultant absence of 2 months 4 days thereafter. Resultantly, vide order dated 11.05.1991 (Annexure P-1), the SSP Bathinda had forfeited 5 years of service for the absence period which was treated as leave without pay. The appeal against the said order was

allowed and the punishment was reduced as 3 years service to be forfeited. The Inspector General of Police, Punjab had not interfered in the order which had partly allowed the appeal and dismissed the revision petition on 10.02.1992 (Annexure P-3).

3. The other misconduct was *inter se* connected with one Constable Atma Singh and the misconduct was that the appellant had asked him to write threatening letters to him and the fact that the same were allegedly written on behalf of extremist Gurjant Singh, Budh Singh Wala. The alleged purpose as such was that he would get government weapons for security on account of the threat perception. Resultantly, a formal inquiry as such was held, in which it was found that the constable had written a letter on behalf of the appellant and on account of the same the dismissal order was passed on 27.01.1992 (Annexure P-4) against both the police officials. The appeal of the appellant was dismissed by DIG of Police, Ferozepur Range on 16.06.1992 (Annexure P-5) and the revision also was dismissed on 16.04.1993 (Annexure P-6) by the Inspector General of Police, Punjab.

4. It is to be noticed that the co-delinquent official Atma Singh had preferred a civil suit challenging the said order of dismissal before the Sub Judge 2nd Class, Bathinda on the ground that there was a different inquiry officer who had recorded the statements of witnesses and the one who had passed the impugned order. Accordingly, it was held that delinquent employee was required to be heard and a personal hearing was to be given, which was not done and, therefore, the order of punishment was illegal. The same was set aside alongwith the appellate order dated 11.06.1993 passed by DIG, Ferozepur, vide judgment and decree dated

19.12.1994 (Annexure A-8). Vide judgment dated 21.11.1997 (Annexure A-9), the Additional District Judge, Bathinda upheld the said decision while dismissing the appeal filed by the State while noticing that the preliminary inquiry which had been conducted had not been supplied and that no opportunity was given to the plaintiff at the time of deciding the appeal and the order of dismissal is in violation, since personal hearing was not given and the order was illegal, null and void.

5. Admittedly, the State had preferred Regular Second Appeal No.1495 of 1998, wherein a Single Judge of this Court noticed that if the statements of the witnesses in the preliminary inquiry have been relied upon, then copy of the statements should have been given to the plaintiff. Resultantly, the appeal was allowed on 26.09.2001 (Annexure A-10) by giving an opportunity to the State to pass a fresh order after giving personal hearing to Atma Singh. It is not disputed that the DIG of Police passed a fresh order on 31.12.2001 (Annexure A-11), wherein keeping in view the circumstances that there was an admission regarding writing of the letter, the punishment of dismissal was set aside and 2 years service was forfeited and the said employee was reinstated in service. The period spent outside by the said constable from duty was considered as non-duty period and it was held that he would have no right to get any TA/DA or any other allowance. Relevant portion of the said order reads as under:-

“I have perused the old record of Ex. Constable (C-1) Atma Singh No.590/Bathinda with due care and caution and have found from the perusal that this Ex. Constable (C-1) Atma Singh No. 590/Bathinda has been recruited in the department of Police on 23.10.1987 and during his service, 17 appreciation letters have been received to him. The above mentioned Ex. Constable has been recruited on priority basis in place of his father. He has

admitted the letter, written after falling in the trap of his friend Ex. Constable Makhan Chand No.1399/Bathinda, to be correct and has confessed the guilt committed by him. This constable belongs to a poor family and is the only bread earner for his children in his house. While keeping in view the above mentioned circumstance, I consider that the punishment of dismissal of service given to the Ex.. Constable (C-1) Atma Singh No. 590/ Bathinda is much more. Therefore, while adopting lenience, by reducing the punishment of his dismissal, his two years service is forfeited on regular basis and the Ex. Constable (C-1) Atma Singh No. 590/Bathinda is hereby reinstated in service. The period spent outside by the Ex. Constable from duty will be considered as-his non duty period and he will have no right to get any TA/DA or any other allowances, as during this period he has not done any duty. A copy of this order may be supplied to the Ex. Constable (C-1) Atma Singh No. 590/Bathinda free of costs.

Sd/- R. Meena
Deputy Inspector General of Police
Faridkot Range Faridkot”

6. Thus, from above it would be clear that after a period of 9 years Atma Singh was able to get reinstatement, whereas the appellant/writ petition had preferred a writ petition which remained pending and was eventually decided in the year 2016. This aspect could not be considered by the learned Single Judge that out of the same departmental inquiry a different treatment had been meted out to Atma Singh and the said documents have now been placed on record only. The learned Single Judge, thus, did not have the benefit of the said orders. Keeping in view the above, this Court passed the order dated 05.05.2022, which reads as under:-

“During the course of hearing, it transpires that appellant Makhan Chand was dismissed from service vide order dated 27.01.1992 (Annexure P-4) along with one Constable Atma Singh.

The appeal of the petitioner was rejected by the D.I.G. of Police (Annexure P-5) and similarly, the revision was dismissed by the Inspector General of Police on 16.04.1993 (Annexure P-6). Resultantly, he filed the writ petition, whereby learned Single Judge dismissed the petition on 27.01.2016, upholding the said order.

It has been brought to the notice of this Court that Constable Atma Singh challenged the same dismissal order dated 27.01.1992 before the Civil Court at Bathinda, which was decided in his favour on 19.12.1994 (Annexure A-8). The appeal of the State was dismissed on 21.11.1997 (Annexure P-9) and thereafter, on 26.09.2001 (Annexure P-10), learned Single Judge of this Court in RSA No.1495 of 1998 directed that the department would pass a fresh order after giving opportunity of personal hearing to the said employee. The order of DIG of Police allegedly dated 31.12.2011 has been placed on record as Annexure A-11, wherein the punishment of dismissal was modified to 2 years' forfeiture of service and he was reinstated by treating the period outside duty as non-duty period and he had no right to get any T.A./D.A. or any other allowances.

In such circumstances, prima facie we are of the considered opinion that since out of common departmental proceedings and common dismissal order, the appellant would be entitled for consideration on the ground of parity at least, even though, his role might be more damaging in the departmental proceedings as such. The same is thus within the ambit and purview of the disciplinary authority.

Mr. Tinna brought to our notice that as per the affidavit of Des Raj, PPS, Superintendent of Police (Hqrs.), Bathinda dated 20.02.2017 filed on behalf of respondent Nos. 1 to 3, appellant had been enlisted on 23.10.1981 and therefore, he would have already superannuated had he continued in service. In such circumstances, financial benefits effect is to be seen as to whether the appellant is entitled for the same.

Accordingly, let the competent authority to take a fresh look on the dismissal order in view of the issue of parity which is involved. Necessary action be taken and affidavit be filed on or before the next date of hearing.

Adjourned to 22.09.2022.”

7. The State unfortunately by way of additional affidavit filed now has appended the decision dated 14.09.2022 (Annexure R-1), whereby it has reiterated its stance that the Inspector General of Police, Bathinda Range, Bathinda has come to the conclusion that the appellant was main delinquent of the above allegations and opportunity of personal hearing was given to the appellant to prove his version, but he has failed to produce any new fact. It was also mentioned that Atma Singh who had been reinstated had been dismissed from service subsequently due to registration of other criminal case FIR No.3 of 2006. The factum of appellant being involved in other case bearing FIR No.34 dated 07.04.2018 under Sections 307, 324, 323, 148, 149 PC and under Section 27 of the Arms Act at Police Station Sadar Rampura, also weighed. It is also a matter of record that Constable Atma Singh had been convicted and sentenced for 3 years by a Court in case bearing FIR No.3 dated 11.01.2006 under Sections 435, 447, 427, 506, 148, 149 IPC register at Police Station, Balianwalia and, thus, he was dismissed on that account on 30.04.2011 and is stated to have not been reinstated. The relevant part of the order dated 14.09.2022 (Annexure R-1) reads as under:-

“Undersigned has carefully perused the para wise comments obtained from the Senior Superintendent of Police Bathinda and concerned record, on perusal it is found that Constable Makhan Chand No.1399/BTA was deputed to PTC Phillaur on dated 05.04.1991 to serve summon to Inspector Sohan Singh. This official suggested to Constable Atma Singh No. 590/BTA who was undergoing Lower School Course there that he should write threatening letters to his (Makhan Chand) house and his own (Atma Singh) house mentioning therein that they leave their service and these letters be posted on behalf of any extremist. He (Makhan Chand) also suggested to Atma Singh that on the

basis of these letters he would request the higher officers by appearing before them and can get the government weapon for their security, on conducting the formal inquiry by Shri Piara Singh, SP (Hqrs.) it was found that the case-u/s 307 IPC is registered at PS Nehianwala against delinquent Makhan Chand. On account of this he had remained in jail for two months. Constable Makhan Chand No. 1399/BTA kept these letters concealed at his residence for two months. During the formal inquiry, statement given by delinquent Constable Makhan Chand No. 1399/BTA before SP (Hqrs.) regarding submission of above said letter to SHO Balianwali, was also false statement. During the formal inquiry, SHO told that neither he has got any information regarding the above said letter nor anyone came to the Police Station and knowingly concealed the above said threatening letter for two months, this allegation was proved against Constable Makhan Chand No. 1399/BTA which was leveled in the charge sheet. Apart from this, Constable Atma Singh No. 590/BTA himself admitted his fault when he was personally appeared before the Senior Superintendent of Police, Bathinda that he himself wrote the above said threatening letter on behalf of extremist Gurjant Singh Budh Singh Wala in his writing as suggested by Constable Makhan Chand and posted the same from Phillaur at the residential address of Makhan Chand. Therefore, Constable Makhan Chand 1399/BTA is a main delinquent of above said allegations and appeals filed by him to the senior officers have already been rejected. Opportunity of personal hearing was granted to the above said official to prove his version, who appeared before the undersigned on 14.09.2022 for his personal hearing. During the personal hearing, above said official has failed to produce any new fact. To reinstate Constable Makhan Chand No.1399/BTA from his dismissal by giving parity against Constable Atma Singh No.590/BTA is not suitable, therefore in view of above, order No. 221-26/ST dated 27.01.1992 passed by the punishing authority Senior Superintendent of Police Bathinda is hereby affirmed.”

8. Apparently, the Authority had failed to take into

consideration that in the departmental proceedings, the inquiry officer was

common and the dismissal order dated 27.01.1992 was common. Atma Singh had preferred an appeal and then preferred the civil suit and was successful in the same. In pursuance to the order passed by this Court in RSA No.1495 of 1998, the State had taken a different view and had reinstated Atma Singh by forfeiting 2 years service, which was further reduced to one year in service by the Inspector General of Police. He was not paid anything for the period he remained out of service. In such circumstances, the State was given an opportunity as such to act in the same manner qua the present appellant, but has failed to do so and passed the order dated 14.09.2022 (Annexure R-1) denying the said relief. The illegalities in the proceedings which were there had been noticed by the civil court and eventually while deciding the RSA this Court had granted the State an opportunity, which had taken a lenient view by forfeiting only one year service.

9. Admittedly, the appellant who was enlisted on 23.10.1981 and is stated to have attained the age of superannuation on 20.02.2017 and, therefore, the issue is now only of pensionary benefits, which are accrued to him, as he cannot be reinstated in service. Therefore, the State should have more circumspect in keeping the principles of equality and Article 14 of the Constitution of India to take a similar view.

10. Resultantly, we are of the opinion that the order of dismissal dated 27.01.1992 (Annexure P-4) which has been upheld by the revisional authorities in appeal is liable to be modified on the ground of parity to the extent of the forfeiture of 2 years service as he was held to be main instigator and the denial of the pay for the non-duty period on the principle of 'No Work No Pay'. It is further made clear that we have not interfered

with the order as such of forfeiture of 3 years service, which was also imposed and modified in appeal for the absence period of 2 months and 4 days. Therefore, there will a total forfeiture of 5 years service of the appellant and he will be deemed to have superannuated on the date of his retirement and would be entitled for all pensionary benefits on account of service for the balance period.

11. The appeal is, accordingly, allowed to the abovesaid extent.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

23.11.2022
Naveen

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