

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA-4497-2015 (O&M)

Decided on 22.10.2024

Anand Singh @ Kumar

... Appellant

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Devesh Nehra, Advocate for the appellant

Mr. BS Virk, Sr.DAG Haryana

Sandeep Moudgil, J.

(1). This regular second appeal under Section 100 CPC has been brought by the appellant-Anand Singh @ Kumar against an appellate - decree dated 03.03.2015 passed by Sh. AS Narang, District Judge, Jhajjar confirming the decree of the trial court dated 06.02.2014 passed by Sh. Fakhruddin, Civil Judge (Sr.Divn.), Jhajjar dismissing the appellant-plaintiff's suit for a declaration that the report dated 07.07.2003 and order dated 04.08.2003 passed by respondent No.1-defendant were void, illegal, *non est* and not binding on his rights.

(2). Facts are necessitated for discussion. The appellant-plaintiff, a constable in the Haryana Police since October 18, 1989, had performed his duties at various locations. In 1995, he underwent driver's training and was assigned driving duties. Initially posted in Rohtak, he was later on transferred to Jhajjar in the year 1997 after the district's bifurcation. As a driver, the appellant-plaintiff was responsible for transporting prisoners from various district jails to the courts. On July 17, 2013, while driving the police van (HR-63-0588) to Jhajjar and Bahadurgarh, he noticed that EHC Baljit Singh and Constable

Mahabir Singh had consumed alcohol. The appellant-plaintiff promptly filed a complaint, which was forwarded by ASI Mahinder Singh. Additionally, on March 18, 2003, the appellant-plaintiff transported prisoners to Jhajjar and Bahadurgarh, returning to Bhiwani the same day. The following day, being a holiday, the appellant-plaintiff was instructed to remain on duty at the police line in Bhiwani while other officials were allowed to go home. On March 20, 2003, the appellant-plaintiff resumed his duties, transporting prisoners from the district jail in Bhiwani to Jhajjar and Bahadurgarh, and returning to Bhiwani in the evening. The appellant-plaintiff alleged that after filing a complaint against Baljit Singh and Mahabir Singh, senior staff members retaliated by marking him absent through ASI Mahender Singh. Defendant No.4-IGP appointed Inspector Ranbir Singh as the inquiry officer, who submitted a report on July 7, 2003 and based thereupon, the Superintendent of Police, Jhajjar, imposed a punishment of stoppage of two increments with permanent effect on August 4, 2003. The appellant-plaintiff appealed against this order, but it was rejected by Defendant No.3-DGP, Haryana on November 27, 2003. The plaintiff then approached this Court in CWP No.1621 of 2004 and vide order dated 30.08.2005, this Court dismissed the same with liberty to the appellant to file a civil suit. The appellant-plaintiff challenged the inquiry report dated 07.07.2003 (Ex.P3) and order dated 04.08.2003 passed by Superintendent of Police, Jhajjar being illegal, null, and void, *inter alia*, on the ground that (i) The inquiry officer was biased, having marked the plaintiff absent; (ii) The punishing authority ignored crucial evidence, including the log book and witness statements; (iii) The inquiry officer's findings were incorrect and based on personal knowledge, conjectures, and surmises; (iv) The punishing authority failed to pass a speaking order and

consider the plaintiff's response to the show-cause notice; (v) The appellate authority rejected the appeal without recording reasons; (vi) The plaintiff was denied a fair opportunity to defend himself during the inquiry.

(3). The respondents-defendants put in appearance and raised the preliminary objection of maintainability and on merits contended that the appellant-plaintiff though has brought the prisoners in vehicle to Jhajjar and Bahadurgarh and return to Bhiwani with that vehicle on 18.03.2003 but it is denied that he was present on duty on the day for which his absence was marked. It was vehemently denied that senior staff harbored any animosity towards the appellant-plaintiff due to the complaint filed against Constable Baljit Singh and Constable Mahabir Singh and the punishment of stoppage of two annual increments with permanent effect was awarded in accordance with the available records and the impugned enquiry report and the order are valid and binding. The trial court framed the following issues:-

- 1. Whether the report dated 07.07.2003 and order dated 04.08.2003 passed against the plaintiff by defendants is illegal, null and void and not binding upon the rights of the plaintiff and is liable to be set aside on the grounds alleged in the plaint?OPP*
- 2. Whether the suit is not maintainable in the present form?OPD*
- 3. Whether the plaintiff is estopped from filing the suit by his own act and conduct?OPD*
- 4. Whether the plaintiff has no locus-standi to file the suit?OPD*
- 5. Whether this court has no jurisdiction to entertain and try the present suit?OPD*
- 6. Whether the suit is bad for want of legal notice to the defendants?OPD*
- 7. Whether the suit is bad for non-joinder and mis-joinder of necessary parties? OPD*
- 8. Relief.*

(4). The subordinate court, based upon the oral and documentary evidences, led by the parties, vide judgment dated 06.02.2024 decided all the issues against the appellant-plaintiff with the following findings:-

“24. Absence of an member of law enforcing agency. constitute serious default on the part of delinquent official. The enquiry report Ex.P3 goes to show that the plaintiff was given full opportunity of conducting cross examination upon the witnesses examined by the department. Imposition of punishment of stoppage of two increments with permanent effect, was appropriate and justified in view of the seriousness of misconduct of the plaintiff. Thus, findings of issue no.1 stands decided against the plaintiff and in favour of the defendants.”

“26. The plaintiff failed has to prove any irregularity or infirmity in the process of the enquiry and the enquiry report Ex.P3. Plaintiff has committed misconduct on remaining absent from the duty. Hence. the plaintiff has neither locus-standi to file the suit nor the suit is maintainable and plaintiff is also stopped from filing the suit by his own act and conduct. Resultantly, findings of these issues also stands decided in favour of the defendants and against the plaintiff.”

(5). The District Judge, Jhajjar affirmed the judgment and decree of the trial court and vide impugned judgment dated 03.03.2015 observed as under:-

“...I do not agree with the Enquiry Officer that the Appellant was arrested on 20.3.2003 and released on bail on 21.3.2003. The Appellant has produced on the record the copy of order dated 27.3.2003 passed by Addl. Sessions Judge, Sonapat (Annexure-2), on the application for anticipatory bail on 27.3.2003. In case, the Appellant had been arrested, the question of his being granted anticipatory bail did not arise. However, I am of the considered view that Enquiry Report cannot be found fault with as Enquiry Officer has taken into consideration the evidence led by the

*Department as well as by the Appellant and after considering the same, has discarded the evidence led by the Appellant. I am of the considered view that there is no force in the contention of the counsel for the Appellant that Enquiry Report is based on no evidence. In fact the Enquiry Report is based on evidence. The Civil Court is not an Appellate Court in respect of the findings recorded in the enquiry and cannot substitute its findings with that of the Enquiry Officer. Hon'ble Supreme Court in **Narinder Mohan Arya's** case (supra), has held that "an Enquiry Officer is entitled to draw his own reference and so long the inference drawn by him is supported by some materials on record. It is well settled that a Court of judicial review would not interfere therewith." I am of the considered view that the Trial Court has appraised the evidence properly and come to the right conclusion. Accordingly, I find this issue against the Appellant."*

(6). Learned counsel for the appellant-plaintiff contends that the judgments passed by both the courts below are totally illegal, unlawful and against the principle of *audi alterm partem* inasmuch as he was charge-sheeted due to mala fide reasons as he had filed complaint against the co-employees of the Enquiry Officer, who was the 'interested' person and the enquiry report cannot be allowed to sustain being biased, prejudicial and not impartial. He further averred that the trial court returned an absolutely erroneous finding off the record and did not appreciate the fact that the appellant remained never absent which fact has been corroborated by the District Judge in its judgment.

(7). The appellant further argued that the courts below failed to take into consideration the fact that the Kuldeep Singh PW2 driver who, as per the respondents, substituted the appellant in his purported absence, has categorically deposed that he did not drive the vehicle in place of the appellant on 20.03.2003 which is sufficient to disprove the respondents' stand that the appellant was

absent from duty from 18.03.2003 to 20.03.2003 whereas the appellant has control over the log book and rajnamcha being a official record and its entry is required to be made by the respondents themselves which also shows the ulterior motive and mala fide of the respondents in entering into details of his arrival and departure on the said date.

(8). Learned counsel for the appellant submits that the following substantial questions of law arise for consideration before this Court:-

- (i) Whether the regular enquiry conducted against the appellant has been held in accordance with the rules and by following the principles of *audi alteram partem*?
- (ii) Whether or not the enquiry report is binding on the Civil Court, and if so not, can the Civil Court interfere in the findings recorded the enquiry officer?

(9). I have heard learned counsel for the parties and gone through the record.

(10). Learned counsel for the appellant has relied upon the contents of the final report (Ex.P3) wherein it has come that in the cross-examination of PWIV Man Singh, PE Guard, he deposed that on 19.03.2003 was a gazetted holiday and that the appellant ever absented and had performed his duty well. Further a perusal of the cross-examination of ASI Mahender Singh, where a question was put as to why he did not record absence of the appellant on 18.03.2003 or 19.03.2003, he deposed that “*as a case has been recorded in PS Kharkhoda against you u/s 452/506 IPC, it was my compulsion to record absence which has been recorded according to the orders of the officers.*”

(11). In the log book dated 20.03.2003 also, the absence of the appellant was not recorded. Furthermore, it has come on record that DW4 Kuldip Singh categorically deposed that neither he knew driving of vehicle and that he has been shown by ASI Mahender Singh vide Rapat No.9 dated 20.03.2003 in the rojnamcha that he had never performed the duty of a driver and on the given date, the above mentioned prison van was being driven by Anand Singh 574 – the appellant. The relevant portion of the final report dated 07.07.2003 reads as under:-

“DW-4 Sh. Kuldip Singh No.224 Sector 6 Bahadurgarh deposed that he is posted in Police post Sector 6 Bahadurgarh as General duty constable and prior to 16.5.2003 he was posted in P.E. Guard Jhajjar. On 20.3.2003 I came present from leave and went to Bhiwani jail to produce the accused alongwith P.E.Guard Jhajjar and the accused were produced in Jhajjar and Bahadurgarh. The vehicle NO. HR 63 0588 was being driven by Mr. Anand Kumar NO. 574 JJR. Neither I know driving of vehicle and I have been shown by ASI Mahender Singh vide Rapat No. 9 dated 20.3.2003 in the rojnamcha P.E. guard Jhajjar that I have been shown as Driver. I have never performed the duty of a driver. The above mentioned prison van was driven by Anand Singh 574 after taking the accused from Bhiwani to produce in the Bahadurgarh and Jhajjar courts. I had been with him from Bhiwani. On the cross examination by inquiry officer this witness has deposed that Mahender Singh ASI had shown in Rapat No. 9 dated 20.3.2003 the witness as driver of vehicle No. HR-63-0588 whether the witness has signed or not and what he has to say about this report. The witness clearly deposed that neither it bears his signature nor he has any knowledge about the report, he was only told later on by Anand Kumar No. 574/JJR that I have been shown as driver. I have never driven any vehicle nor I know the driving.”

(12). In the final report itself, a perusal of the deposition made by DW6 Const. Virender Singh would also show that he had gone along with the appellant on 18th & 20th March, 2003 in the vehicle to produce the accused in the court at Jhajjar and that the appellant was the driver of the vehicle and he was not absent on 18.03.2003 to 20.03.2003 but the appellant is stated to be not present on 21.03.2003 and a mark to this effect was made by Mahender Singh ASI who was the Bhiwani Jail guard incharge.

(13). The finding returned in the enquiry report to the effect that the appellant absented from duty as he had a fight with his neighbours in relation to which FIR No.36 dated 19.03.2003 was recorded at PS Kharkhoda and thus he was arrested on 20.03.2003 and was released on bail on 21.03.2003. This finding of fact stands repelled by the District Judge in its judgment wherein it has been categorically observed that the appellant had produced on record the copy of the order dated 27.03.2003 passed by Addl. Sessions Judge, Sonapat (Annexure 2) vide which the said court granted anticipatory bail to the appellant in the above-referred FIR No.36/2003 (a copy of which has been handed over by appellant's counsel in court) and it was for this reason that the District Judge, Jhajjar did not find favour with the argument the appellant was absent from duty due to his arrest in some other case which stands successfully rebutted by the appellant. This is all the more pertinent to point out that the department itself is perplexed as to on which date the appellant was actually absent as there are contradictions in the date of the alleged absence of the appellant which is fateful to the case of the respondents. It show that ASI Mahender Singh was the same officer who marked the appellant absent but failed to make entry to that effect in the log book which is necessary for the purpose of showing the absence of the official

during the office hours and later on he himself was appointed as the enquiry officer.

(14). Another aspect which needs to be highlighted is that the Courts below have based their findings on the basis of the evidence which was led before the enquiry officer rather than conducting independent trial proceedings at its own. In matter of disciplinary enquiry, the civil court cannot sit as appellate authority and there it is incumbent upon the civil court to see as to whether the enquiry has been conducted as per relevant rules and dues opportunity was given to the delinquent or not.

(15). Enquiry reports, particularly those arising from departmental proceedings, do not bind civil courts. Such reports are treated as one form of evidence among many, and the courts retain the discretion to accept or reject them based on the overall context of the case. While an enquiry report can influence civil proceedings, it cannot solely determine their outcome. Courts are required to consider all evidence presented in a case, including but not limited to the findings of any departmental enquiry. In summary, while enquiry reports are significant and can provide valuable insights into a case, they do not have binding authority over civil courts, which maintain their own evaluative processes and standards for evidence. The expression 'Natural Justice' conveys the notion that the result of the process should be just. There are two concepts underlying this doctrine, namely, the authority deciding the dispute should be impartial and the party to be affected should be given full and fair opportunity of being heard. Reference can be made to *C. Pitchiah v. Andhra University AIR 1961 AP 465.*

(16). Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during enquiry proceedings against the appellant by itself could not be treated to be evidence in the civil or criminal proceedings. Before the Civil Court, no witness was examined to prove said documents. The departmental witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, placed by the Enquiry Officer on the registration of FIR against the appellant which could not have been treated as evidence.

(17). According to the appellant, Kuldeep Singh the other driver categorically deposed that he did not drive the vehicle and it was the appellant who drove the vehicle from 18th March, 2003 to 20th March, 2003. Other than what has come in the enquiry proceedings, some evidence should have been brought on record before the trial court to show that the appellant had actually absented from duty on the given date moreso when the witnesses produced by the departmental authority themselves have contradicted the stand of the department. Admittedly, there was no direct evidence rather there is admission made by the respondents themselves before the courts below that the appellant-plaintiff though has brought the prisoners in vehicle to Jhajjar and Bahadurgarh and return to Bhiwani with that vehicle on 18.03.2003 but it is denied that he was present on duty on the day for which his absence was marked. The respondents cannot be permitted to blow hot and cold simultaneously. Either the appellant was absent from duty or he performed his duties on the said date. The

stand taken by the respondents is self-contradictory and that being so, the courts below failed to take into consideration such incongruous assertion made by the respondents. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

(18). Accordingly, this regular second appeal is allowed and the judgments dated 03.03.2015 passed by the District Judge, Jhajjar as well as the judgment & decree dated 06.02.2014 passed by the trial Court are hereby set aside, consequently the suit of the plaintiff-appellant is decreed.

(19). It is directed that the appellant shall be entitled to all the consequential service and retiral benefits.

(20). The decree-sheet be prepared accordingly.

22.10.2024
V.Vishal

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

(Sandeep Moudgil)
Judge

- Yes/No
- Yes/No