(2000) 11 P&H CK 0075

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 1863 of 1984

Punjab State		APPELLANT
	Vs	
Narain Singh		RESPONDENT

Date of Decision: Nov. 27, 2000

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 19
- Punjab Police Rules, 1934 - Rule 16.2, 16.24

Citation: (2000) 11 P&H CK 0075

Hon'ble Judges: M.L. Singhal, J

Bench: Single Bench

Advocate: Mr. H.S. Giani, for the Appellant; Mr. Anil Sharma, DAG, Punjab, for the Respondent

Judgement

M.L. Singhal, J.

Constable Narain Singh was dismissed from service by the order of Senior Superintendent of Police, Amritsar dated 14.8.1980. He challenged his dismissal from service effected by SSP Amritsar vide the said order by means of suit for declaration insliituted on 6.4.1981. It was alleged in the plaint that he joined service as Constable about 19 years ago. To his misfortune, he earned the displeasure of some officers posted at Police Station, Bhikhiwind. It was in that background that he was ordered by Munshi Gur-dev Singh, who was a constable very junior to him to keep surveillance on one accused, who was lying tied to a tree in Police Post, Kacha Paca. Allegation cooked against him was that he misbehaved with Munshi Gur-dev Singh and did not obey his orders as it was not within the power of Munshi Gurdev Singh to order him as he himself was a constable and very junior to him. It was further alleged by him that he could not be party to the torture being inflicted on that accused person. An inquiry was held into the said allegation. It was alleged in the plaint that no copy of the complaint nor any other document was supplied to him either by the Inquiry Officer or by the punishing authority. He was not given any opportunity to produce his defence. He was not allowed any facility

to prepare cross-examination of the witnesses examined against him. He filed written statement of his defence. Inquiry Officer did not consider the written statement of his defence. He recorded a cryptic finding holding him guilty of the charges. He had gone out of the way to hold him guilty. Punishing authority without going through the file and relevant documents issued him show cause notice calling upon him to represent against the proposed punishment of dismissal. He placed all the facts before the punishing authority in his representation and asked for personal hearing. Punishing authority did not give him personal hearing. He did not record what he had stated before the punishing authority over and above what he had submitted through his written statement and passed the order dismissing him from service, which was arbitrary, cryptic, in violation of the rules of justice and the provisions of the Constitution of India, illegal, void and unenforceable. It was prayed that despite that order he continued to be in the service of the State of Punjab with all the powers and privileges of the rank he was holding before the said order was passed.

2. Defendant-State of Punjab contested the suit of the plaintiff. Plaintiff was enrolled as temporary constable on 8.8.1961. He was uneducated. During his entire service, he had earned seven commendation certificates against the following punishments :-

"In the year 1975 he was dismissed from the force as he fiad absented without permission or leave on 22.8.1975 but on appeal the punishment was modified to that of forfeiture of one year service by the Deputy Inspector General of Police, Jalandhar Range, Jalandhar Cantt."

3. On 2.5.1980 plaintiff refused to carry out the direction of Munshi Gurdev Singh and rather inflicted number of lathi blows on him. He was ordered to be dealt with departmentally for this act of indiscipline. Inquiry Officer found him guilty of the charge framed against him. On 14.8.1980, he was dismissed from service. During the course of departmental inquiry, he was supplied with the list of PWs along with the copies of the relevant documents. He was given full opportunity to cross-examine witnesses and take down notes. Inquiry Officer held departmental proceedings strictly in accordance with the provisions laid down in Punjab Police Rule 16.24 in the presence and within the hearing of the plaintiff who was given full opportunity to cross-examine the PWs and to put up his defence. He was placed under suspension with effect from 3.5.1980 afternoon. His appeal against the dismissal was rejected by DIG Police, Jalandhar Range, Jalandhar.

4. On the pleadings of the parties, the following issues were framed :-

1. Whether the impugned order dated 14.8.1980 passed by SSP Amritsar is illegal, void and ineffective against the right of the plaintiff ? OPP

2. Whether the suit is neither in proper form nor maintainable as such ? OPD

3. Relief

5. Vide order dated 20.8.1983, Sub-Judge 1st Class, Amritsar dismissed the plaintiffs suit, in view of his findings, that the inquiry had been conducted according to the rules. Plaintiff had admitted the charge levelled against him that he had given beating to Munshi Gurdev Singh because he had abused him. No formal inquiry was needed when he had admitted charge against him. Still inquiry was held. It was found that it was misconduct on the part of the plaintiff, who refused to obey the command of a superior and not only that he disobeyed the command of his superior but also gave him beating. Such misconduct on the part of the plaintiff squarely called for his dismissal from service. It was also found that the order dismissing him from service was a speaking order in which every aspect of the matter was dealt with. Order of the DIG passed on appeal was equally a speaking order dealing with every aspect of the matter.

6. Plaintiff went in appeal, which was allowed by District Judge, Amritsar vide order dated 27.2.1984.

7. Not satisfied with the order of District Judge, Amritsar dated 27.2.1984, State of Punjab came up in appeal to this court.

8. There can be hardly any doubt that it was an act of indiscipline on the part of the respondent-plaintiff, who disobeyed the command of his superior. This misconduct became accentuated and aggravated by the further fact when he gave Jathi blows on his superior Munshi Gurdev Singh. Such a grave misconduct would definitely call for dismissal from service of a member of the disciplined force like the plaintiff. Rule 16.2 of the Punjab Police Rules lays down that "dismissal shall be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete un-fitness for police service." It further lays down mat "in making such an award, regard shall be had to the length of the service of the offender and his claim to pension." It was submitted that the misconduct complained of was not that serious misconduct as to call for the extreme penalty of dismissal from service. It was submitted that for this conduct he could be retired compul-sorily from service, so that he could earn pension. Tt was submitted that before awarding him dismissal from service, SSP, Amritsar should have considered his claim to pension in view of the fact that he had put in 19 years of service. In the impugned order, SSP Amritsar has observed that it was a grave misconduct on me part of Narain Singh to have injured constable Gurdev Singh with dang blows and SSP Amritsar took into account the misconduct attributed to him and after taing into account the misconduct attributed to him, he observed that nothing short of dismissal from service would meet the ends of justice. DIG of Police, Jalandhar Range, Jalandhar while dismissing his appeal observed that he committed an extremely grave misconduct in refusing to carry out the direction of Moharrir constable and further by inflicting a number of lathi blows on him. Punishment of dismissal from service was rightly awarded to him." It was submitted relying upon Gurdev Singh v. The State of Haryana and others 1976(2) SLR 442 that punishing authority is required to consider the following things :-

(i) Whether the delinquent was guilty of misconduct; (ii) Whether this conduct could be classified as gravest act of misconduct; and (iii) Before dismissing him from service, the punishing authority has to take into account his length of service and claim to pension. In my opinion, SSP Amritsar did take into account the misconduct attributed to him and after taking into account the misconduct attributed to him, he observed that nothing short of dismissal from service would meet the ends of justice, in the use of these words is inherent that his length of service and his claim to pension was considered but was repelled. DIG of Police. Jalandhar Range, Jalandhar observed that he had committed extremely grave misconduct in refusing to carry out the direction of Moharrir constable and further by inflicting a number of lathi blows on him and punishment of dismissal from service was rightly awarded to him. Keeping in view the nature of misconduct attributed to him, I don"t think he could be allowed pension. In Gurdev Singh"s case (supra), SI Gurdev Singh, who was working as SHO Police Station, Ladwa was summoned from his residential quarter by DSP Thanesar Tikka Singh who found him to be under the influence of liquor. He was got medically examined and was round smelling of alcohol and his gait was staggering. Departmental inquiry was held when Inquiry Officer-found the charge proved and he was dismissed from service. While dismissing him from service, the punishing authority did not take into consideration his length of service and his claim to pension. He had to his credit about 27 years of service when the order of his dismissal was passed against him. It was felt by this court that if punishing authority had adverted to the length of his service and his claim to pension, the punishment may well have been much lighter.

9. Faced with this position, learned Counsel for the respondent submitted that the respondent was not given opportunity of hearing. Suffice it to say opportunity of hearing was given to him. Charge-sheet was drawn up against him. Copy of charge sheet was supplied to him. He pleaded not guilty to the charge, claimed trial and stated that he would lead defence. Department examined constable Gurdev Singh, HC Kashmira Singh and ASI Ranjodh Singh. Delinquent did not cross-examine any of them. He stated before the Enquiry Officer that he did not want to cross-examine them as whatever they had stated that was all truth conducing to the actual position. Department examined DSP P.S. Randhawa PW4, Dr. Satwant Singh of Civil Hospital, Patti and ASI Surti Singh PW6. In cross-examination, Shri P.S. Randhawa PW4 stated that Constable Narain Singh came to him and made statement before him in which he stated that Constable Gurdev Singh had abused him and in turn he gave him dang blows. Dr. Satwant Singh, who found injuries on Constable Gurdev Singh was not cross- examined by him. He did.not cross-examine ASI Surti Singh ASI Surti Singh is an eye-witness. He supported Constable Gurdev Singh through and through. ASI Surti Singh stated that Munshi Gurdev Singh asked Constable Narain Singh to close the main gate of the chowki and lock it and hand over the key to him and the delinquent replied how could one constable command another constable. 11C Kashmira Singh asked them not to quarrel and himself went to the main gate to close it. Delinquent started raining dang blows on constable Gurdev Singh which fell on his head, thigh and hands. He and HC Kashmira Singh saved

Constable Gurdev Singh from being further injured. ASI Surti Singh was also not cross-examined by him. In pith, his defence was that Constable Gurdev Singh abused him and in turn he gave dang blow. There was no suggestion to any of the PWs. There was thus no failure of justice. He submit-ted written statement of his defence.

10. It was submitted by the learned Counsel for the respondent that the preliminary inquiry had taken place. On the basis of the preliminary inquiry, he was charge sheeted. He was supplied the copies of the statements of Constable Gurdev Singh etc. recorded in the preliminary inquiry. It was submitted that he was not supplied the copy of the preliminary inquiry report. Suffice it to say, he did not ask for the copy of the preliminary inquiry report and because he had the mind not to cross-examine the PWs. Further before (he DSP Patti, who had held preliminary inquiry, he had stated that as Constable Gurdev Singh had abused him he gave him dang blows. It lay upon him to prove that Constable Gurdev Singh had given him that provocation. He failed to prove the defence taken up by him. During the course of inquiry, the delinquent did not state that copies of the statements recorded in preliminary inquiry and the copy of the preliminary inquiry report be supplied to him as these had not been supplied to him. Even otherwise, he was required to show that non-supply of the copies of the statements recorded in preliminary inquiry and the copy of the preliminary inquiry report prejudiced him in his defence. In fact, his defence was that Constable Gurdev Singh had abused him and he in turn gave him dang blows. Constable Gurdev Singh and ASI Surti Singh were the star witnesses. To them, no such suggestion was given. He had, of course, stated before Shri P.S. Randhawa DSP, who held preliminary inquiry that Constable Gurdev Singh had abused him and he in turn gave him dang blows. Delinquent was required to substantiate this defence, though not by the same standard of proof by which the department was required to substantiate the charge.

11. For the reasons given above, I am of the opinion that the order of dismissal passed by SSP Amritsar dated 14.8.1980 is quite in order. Order passed by DIG, Jalandhar Range, Jalandhar on appeal by the delinquent is also in order and so also the order passed by IG Police, Punjab on his revision-cum-mercy petition. In consequence, the appeal succeeds and is allowed. Judgment/decree passed by District Judge, Amritsar are set aside and those of Sub-Judge 1st Class, Amritsar are restored. Plaintiff s suit is dismissed. No order as to costs.

12. Appeal allowed.