(1989) 08 P&H CK 0037

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 3240 of 1984

Ram Pal		APPELLANT
	Vs	
State of Haryana		RESPONDENT

Date of Decision: Aug. 31, 1989

Acts Referred:

- Constitution of India, 1950 - Article 311(2)

Citation: (1990) 2 ILR (P&H) 117

Hon'ble Judges: G.R. Majithia, J

Bench: Single Bench

Advocate: H.S. Gill, for the Appellant; Ram Chander, for A.G., for the Respondent

Judgement

G.R. Majithia, J.
This Regular Second Appeal is directed against the judgment and decree of the First Appellate Court, which on appeal reversed that of the trial Court, dismissing the suit filed by the Plaintiff/, Appellant.

The Facts:

2. The Appellant (hereinafter referred to as the Plaintiff) was a constable in the 1st Battalion Haryana Armed Police. On the basis of allegations of misconduct departmental enquiry was ordered. Enquiry Officer found him guilty of the charge levelled against him. The competent authority ordered his dismissal from service,--vide order dated September 28, 1979. The Plaintiff challenged the order of dismissal in the civil suit on various grounds including that the competent authority while passing the order of dismissal took into consideration the past record of his service where some adverse remarks were recorded. The Plaintiff alleges that while imposing the punishment, he was not informed by the competent authority that his past record would be taken into consideration for imposing the punishment. The suit was contested by the Respondent/Defendant and the material allegations were denied.

3. The pleadings of the parties gave rise to the following issues:

(i) Whether the impugned order dated 22nd September, 1979 passed by the Commandant 1st Battalion H.A.P. Ambala City are illegal, null and void as alleged ? OPP.

(ii) Whether the Plaintiff has no cause of action ? OPD.

(iii) Whether the suit is not maintainable ? OPD.

(iv) Relief.

4. The learned trial judge answered issue No. 1 in favour of the Plaintiff and issues No. 2 and 3 against the Defendants and decreed the suit. On appeal, the learned Appellate Judge reversed the judgment of trial court under issue No. 1.

5. It is not necessary to refer in detail the various grounds on which the impugned order of dismissal was assailed. The order of dismissal from service cannot be sustained for the simple reason that while imposing the punishment the appropriate authority took into consideration the various adverse entries which were awarded to the Plaintiff and he had no opportunity at any point of time to render explanation against those adverse entries. The show cause notice issued to the Plaintiff on the conclusion of the enquiry by the Deputy Superintendent of Police only stated that the charges framed against the Plaintiff by the enquiry officer stood proved and that the competent authority was provisionally of the opinion that penalty of dismissal from the force should be imposed. The charge which was framed against the Plaintiff reads thus:

Charge:

I, Bhagat Singh, Deputy Superintendent of Police, 1st Bn. HAP, Ambala City charge you Constable Ram Pal No. 1/155 under suspensions as under:

That while posted in HAP 1st Bn. HAP Ambala City, your behaviour towards your superior officers was very much rude and indisciplined.

On 24th June, 1979 you were marked absent at the time off morning Roll Call at 7.30 A.M.,--vide DDE No. 41. At about 11.00 A.M. on the same day you were found lying on a charpoy in Old Mess Barrack by Shri Harbans Singh R.I. and Shri Mulakh Raj S.I. /Lines Officer. R.I. asked you to get your return from absence recorded in the D.D. but you refused to do so.

On 25th June, 1979 when the Lines Officer was taking the outdoor patient constables to the Hospital from the Parade Ground you appeared in private clothes near the Chhapar-wali Barrack and said that his name may also be entered in the Outdoor patient Register. The Lines Officer Shri Mulakh Raj replied that you were absent since yesterday, you should first get your return report entered in the D.D. and thereafter your name will be recorded in the Outdoor Register. On this you

became angry and misbehaved with the L.O. rudely and uttered filthy language and proceeded towards the L.O. to snatch the register forcibly but could not snatch due to the timely arrival and intervention of Head Constable Jaipal Singli No. 1/55 with whom occurrence was witnessed by Const. Balbir Singh No. 1/366 and Const. Teja Singh No. 1/546 with whose intervention the matter was pacified.

It is further alleged that you at the time of lodging your return in the D.D. register,--vide No. 2 dated 25th June, 1979 at 9.00 A.M. again mis-behaved with HC Jaipal Singh No. 1/55 and Consts. Niranjan Singh No. 1/194 and Jarnail Singh No. 1/746 in the office of MHC of Battalion Hdqrs and used filthy language as well.

Yours these acts amounts to grave misconduct and indiscipline unbecoming of a Police Officer.

The Enquiry Officer on evidence found that the charge stood proved. The dismissing authority after considering reply to the show cause notice also found that the charge stood proved and the explanation deserved to be rejected. After so doing, he took into consideration the character rolls of the Plaintiff where punishments were awarded to him for the years 1977, 1978 and 1979. After going through all these, the competent authority held that the penalty of dismissal from service should be imposed upon the Plaintiff. As stated supra, the Plaintiff at no point of time was informed that character rolls for the preceding years would be taken into consideration while imposing the punishment. The Government servant is entitled to know of facts which would be taken, into consideration by the competent authority in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his subsequent conduct to the remarks had been exemplary or at any rate approved by the higher officers. The courts do not accept the doctrine of "presumptive knowledge" or that of "purposeless enquiry", as their acceptance will be subversive of the principle of reasonable opportunity. Therefore, it is incumbent upon the authority to give the government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.

6. The second show cause notice did not mention that the competent authority intended to take his previous punishments into consideration in proposing to dismiss him from service. The second show cause notice contravenes the provisions of Article 311(2) of the Constitution of India. It will be useful to refer to the following observations of the apex court in State of Mysore Vs. K. Manche Gowda, , where it was held thus:

Under Article 311(2) of the Constitution, as interpreted by this Court a Government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of the grounds on which it is proposed to take such action: see the decision of this Court in the State of Assam and Another Vs. Bimal Kumar Pandit, Civil Appeal No. 832 of 1962 D/12th February, 1963. If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment; he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a Government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the Government servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that, what the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him.

Relying upon the decision in K. Manche Gowda''s case supra, a Division Bench of this Court in a judgment reported as I.G. Punjab v. Balbir Singh 1973 (2) S.L.R. 271 quashed the order of Inspector General of Police who while disposing of the mercy petition took into consideration the chequered record of service of the official which did not form part of the charge sheet. Thus the order of dismissal from service cannot be sustained. The learned trial court while dealing with this aspect of the case stated thus:

As shall be clear from a perusal of the impugned order dated 28th September, 1981, the Commandant H.A.P. noted in the course of his order that he had perused the previous adverse record of the Plaintiff and also noted the complaints pending against the Plaintiff. The learned Government pleader could not even allege that the commandant had at any time supplied the copies of the record to the Plaintiff.

The lower Appellate Court in para No. 16 of his judgment disposed of the conclusion of the learned trial judge with the following observations:

Certainly the competent authority can take into consideration the previous punishments which were awarded to the Plaintiff after due opportunity to him and in these cases he was provided due opportunity at that time before inflicting the punishments and in the present case there was no need of providing him any

opportunity in the old punishments. Besides the competent authority before imposing the punishment of dismissal heard the Plaintiff in person and the exact order on the file is as under:

The defaulter constable is present. Heard his view point. He says that he had never done any wrong in the past. His attention invited to various commissions and omissions by him (he is referring to the previous punishments etc.). I have applied my mind again and have come to the conclusion that punishment of dismissal is fully justified.

These observations are beyond the record. The order of dismissal dated September 25, 1979 does not indicate that the Plaintiff was asked to render explanation for his past conduct. After the order of dismissal from service was recorded, there is a note to the effect that the defaulter constable is present and he was explained the grounds on which the punishment has been imposed. He says that he had not done anything wrong in the past. His attention was drawn to the past record containing various commissions and omissions. The perusal of the enquiry file reveals that this note does not bear the signatures of the person who recorded it and this does not form part of the order of dismissal. It is not apparent from the file at what point of time and who recorded this note on the file after the order of dismissal of service was passed against the Plaintiff. The learned Appellate Judge is clearly in error in coming to the conclusion that the Plaintiff was afforded an opportunity to render explanation for his past omissions and commissions before the authority took the same'' into consideration while imposing the punishment.

7. For the reasons aforementioned, the judgment and decree of the First Appellate Court is set aside and that of the trial court is restored only on the grounds stated supra. The parties are left to bear their own costs.