

(2009) 09 P&H CK 0155

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 3593 of 2008

Partap Singh

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: Sept. 8, 2009

Acts Referred:

- Constitution of India, 1950 - Article 1, 2, 3
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 22
- Punjab Civil Services (Punishment and Appeal) Rules, 1970 - Rule 5, 8

Citation: (2011) 1 ILR (P&H) 649

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Permod Kohli, J.

Petitioner has been dismissed from service,--vide order dated 3rd January, 2008 (Annexure P-24). Earlier,--vide order dated 27th December, 2004, a fresh charge sheet was issued to him under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 by annulling the earlier charge sheet and the inquiry initiated under the police rules. Vide order dated 27th December, 2004 a charge sheet containing the following charges was served upon the petitioner :

Article-1 Charge against you Shri Partap Singh, Cook, JIC, Amritsar is that you had given official information to Rajinder Kumar @ Kala son, of Shri Mukhtiar Singh, Ramdasia, resident of Street No. 5, Hindustan Basti, Lohgarh.

Article-2 Charge against you Shri Partap Singh, Cook is that whenever you proceed on leave, then you did not come present on duty in time. You are habitual of getting extended the leave and remaining absent.

Article-3 Charge against you Shri Partap Singh, Cook is that your behaviour with the employees posted at JIC, Amritsar was not good."

2. It is alleged that the petitioner proceeded on leave to his home town for 20 days with effect from 28th April, 2004. He overstayed the leave due to sickness and joined on 3rd June, 2004. However, the period of over stay stands sanctioned,--vide order dated 28th July, 2004. It is further stated that the petitioner was summoned to attend the office of Shri R.P. Singh, I.G. (Intelligence) where he was questioned on 23rd June, 2004 and asked whether he has leaked out some information to one accused namely Rajinder Kumar. The petitioner claims that he denied the allegations. The petitioner was, however, placed under suspension,--vide order dated 16th July, 2004 and a departmental inquiry was initiated against him for leaking information to accused Rajinder Kumar as also for absence from duty. One Jagmohan Singh, DSP was appointed as Inquiry Officer and a charge sheet dated 27th July, 2004 was served upon him (Annexure P-8/T). Petitioner submitted reply to the charge sheet on 24th August, 2004. He has alleged that during the inquiry signatures of the petitioner were obtained on some papers on 8th September, 2004 and 10th September, 2004 by HC Bakhtawar Singh of JIC, Amritsar. It is further alleged that petitioner knows only Hindi and was not aware as to what was written on those papers. The further allegation of the petitioner is that on 25th September, 2004 when he was asleep, his finger prints/impressions were taken away by somebody which fact came to his notice when he woke up and found ink marks on his both hands. Petitioner has also alleged that his suspension and dismissal have been procured by respondents No. 6 to 9, who apprehended that the petitioner has given information about the activities to respondent No. 5 DIG (Intelligence). It is also alleged that the petitioner's transfer was sought by respondent No. 6,--vide his letter dated 14th June, 2004 addressed to ADGP (Intelligence) Punjab. It is further case of the petitioner that the inquiry was completed by Shri Jagmohan Singh, DSP, CID, Patiala in five months but no action was taken. Thereafter, the petitioner made an application dated 7th December, 2004 for deciding the proceedings against him as nothing incriminating was found against him. The petitioner was, thereafter, reinstated in service,--vide order dated 3rd May, 2005 (Annexure P-11/ A). Before his reinstatement the petitioner had been served with the impugned Memorandum dated 27th December, 2004 proposing to initiate inquiry under the Punjab Civil Service (Punishment and Appeal) Rules.

3. The petitioner filed writ petition bearing CWP No. 777 of 2005, challenging the order dated 27th December, 2004. This writ petition was, however, dismissed,--vide order dated 13th January, 2005. The second inquiry was conducted by Satpal Singh, PPS, S.P. (Zonal), CID, Patiala. On conclusion of the inquiry, the Inquiry Officer in his report concluded that the charge of absence from duty is not proved as leave has been duly sanctioned. The Inquiry Officer, however, concluded that charge of misbehaviour against the official is proved. Regarding the third charge of leakage of information, the Inquiry Officer concluded as under:-

The third charge against the delinquent is that he leaked the information. Keeping in view the working of the police, this charge cannot be proved directly on the basis of record. But the behaviour of the delinquent, method of working of delinquent has been proved by the witnesses. The circumstances as narrated by the witnesses of the local police, officials of the J.I.C. in their statements and from the knowledge of the police working, I have to conclusion regarding this charge that the information given to accused Rajinder Kumar and the absence of delinquent fully proves this charge and it has been done by the delinquent by putting the security and secrecy of J.I.C. at stake. There is no doubt that such facts cannot be proved on the basis of record because the intelligence work is not based on record. Delinquent was fully aware about it and by taking full advantage of it, the delinquent leaked the information to the above said accused as he had come to J.I.C 2-3 times and was having relations with him.

4. Based upon the inquiry report a show cause notice dated 24th August, 2005 was issued to the petitioner for dismissal from service under Rule 5(IX) of the Punjab Civil Service (Punishment and Appeal) Rules, 1970.

5. It is alleged that inquiry report was not supplied to the petitioner. The petitioner was required to submit his reply to the show cause notice within 15 days. It is also alleged that the petitioner made a request,--vide letter dated 16th September, 2005 for supply of the record to enable him to file the effective reply. However, an interim reply was submitted on 3rd September, 2005. Therefore, copy of inquiry report was supplied to the petitioner under Memo dated 2005. The petitioner filed a civil suit challenging the show cause notice and the memo dated 28th October 2005 in the Court of "Civil Judge (Jr. Divn.) and also applied for interim stay, which was declined. In the meantime, respondents passed impugned order of dismissal dated 3rd January, 2008 and in view of the passing of the impugned order, civil suit was withdrawn without prejudice to the right to challenge the dismissal. The petitioner has thus filed the present petition.

6. Mr. Raina, Learned Counsel appearing for the petitioner has challenged the impugned order on variety of grounds. One of the grounds, being that the findings recorded by the ADGP that the petitioner leaked the information is based upon no evidence. This fact was noticed by the Hon"ble Division Bench when notice of motion was issued on 11th March, 2008. Thereafter,--vide order dated 22nd May, 2008 respondents were directed to place on record the statements of the witnesses on which the Inquiry Officer relied on. The respondents have produced the statements recorded by the Inquiry Officer and translated copies thereof.

7. Along with the translated copies an affidavit was filed by Mr. M.S. Chadha, AIG, Head Quarter, Intelligence, Punjab. In para 3 of the affidavit the deponent has named the prosecution witnesses, whose statements have been relied upon by the Inquiry Officer to hold the petitioner guilty of the charges. As many as 11 witnesses have been named in this affidavit. Xerox copies of statements in vernacular and

translated copies thereof have also been enclosed with the affidavit. From the inquiry report, it appears that the Inquiry Officer has relied upon the statements of only four prosecution witnesses namely Inspector Jagir Singh, SI Karnail Singh, HC Bakhtawar Singh and Bhim Sain, Clerk (Record Keeper) besides the three defence witnesses namely Satnam Singh, SI, HC Hardeep Singh and Shri Ashwani Kumar, Head Clerk.

8. A charge of leaking the secret information to accused Rajinder Kumar @ Kala is said to have been proved only on the statement of Inspector Jagir Singh, who appeared before the Inquiry Officer. The said Jagir Singh during course of his statement before the Inquiry Officer stated that on 30th May, 2004 accused Rajinder Kumar @ Kala while in custody has disclosed that he was brought to the Interrogation Centre earlier three times and he became familiar with Partap Singh, Cook as he used to serve food to him. He has also referred to the statement of Rajinder Kumar @ Kala that Partap Singh had borrowed money on interest from the sister of Rajinder Kumar @ Kala namely Boda and the disclosed all activities going on in the Centre. It is mentioned that Rajinder Kumar @ Kala had also stated that the Cook disclosed him about the raid conducted at his house and on that basis he concealed his material (smack). The respondents have also enclosed the statement of Rajinder Kumar @ Kala along with the affidavit of Shri M.S. Cheema dated 23rd October, 2008. The deponent has made a false statement in the affidavit that the Inquiry Officer relied upon the statements of 11 witnesses named in the affidavit, whereas from the inquiry report it is revealed that only four witnesses were recorded before the Inquiry Officer. The names of all 11 witnesses are said to be the prosecution witnesses, which includes the name of Rajinder Kumar @ Kala. As a matter of fact Rajinder Kumar @ Kala never appeared as a witness in the inquiry against the petitioner. The petitioner has specifically alleged in the writ petition that Kala's statement recorded during the investigation in FIR No. 74, dated 27th May, 2004 u/s 22 of the NDPS Act, was never proved in trial. In any case Rajinder Kumar was an accused in the said case and his statement made during interrogation/investigation could not have been proved in the criminal trial. Except the statement of Jagir Singh, there is absolutely no material or evidence before the Inquiry Officer, which may remotely suggest the charge against the petitioner. Inspector Jagir Singh is also a witness, who has relied upon the statement of Rajinder Kumar @ Kala Singh recorded during interrogation. Statement of Rajinder Kumar @ Kala is not admissible in evidence as he was not produced before the Inquiry Officer. Inspector Jagir Singh himself is not an eye witness to the alleged incident of leakage of information. I have reproduced the findings of the Inquiry Officer herein above which also clearly establish that there was no material before the Inquiry Officer to establish the charge of leakage of information against the petitioner. As a matter of fact the findings recorded by the Inquiry Officer are perverse without there being any legal evidence in this regard. As regards the charge of mis-behaviour is concerned the Inquiry Officer has not returned the

findings on the basis of the evidence. Such findings are also not sustainable in law.

9. The stand of the respondents that the Inquiry Officer has recorded his findings of guilt on the basis of statements of as many as 11 witnesses is totally contrary to record. It is settled principle of law that the High Court in exercise of its powers of judicial review in respect to the disciplinary proceedings is not to sit as a Court of Appeal nor it can appreciate or appraise the evidence recorded during the departmental inquiry, however, while exercising the power of judicial review the High Court can definitely examine the validity of the inquiry and the order passed in disciplinary proceedings, if, the findings by the Inquiry Officer and the disciplinary authority are perverse i.e. without evidence on record or suffer from the vice of arbitrariness/bias and is contrary to law. The petitioner has levelled specific allegations against the respondents No. 6 to 9 including Inspector Jagir Singh, who have been made parties by name. Inspector Jagir Singh is the key witness against the petitioner, who allegedly conducted the interrogation of Rajinder Kumar @ Kala in FIR No. 74. He is party by name as respondent No. 8. He has filed his affidavit by way of reply dated 16th May, 2008. He has only referred to the statement of Rajinder Kumar @ Kala recorded during investigation. Even from his affidavit it appears that he has not specifically denied the allegations of bias and fabrication against the petitioner. Regarding allegations of bias and vendetta against this respondent, he has only stated in para 14 that the allegations against the petitioner have been established in the inquiry and thus the allegations of personal grudge or vendetta by the respondents towards the petitioner holds no grounds. In [Kuldeep Singh Vs. The Commissioner of Police and Others](#), the Hon"ble Supreme Court has laid down the parameters for interference in disciplinary proceedings while exercising the power of judicial review. While considering scope of interference the Hon"ble Supreme Court has held as under :-

9. Normally the High Court and this Court would not interfere with the findings of fact recorded at the domestic enquiry but if the finding of "guilt" is based on no evidence, it would be a perverse finding and would be amenable to judicial scrutiny.

10. A broad distinction has, therefore, to be maintained between the decisions which are perverse and those which are not. If a decision is arrived at on no evidence or evidence which is thoroughly unreliable and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, howsoever compendious it may be, the conclusions would not be treated as perverse and the findings would not be interfered with.

10. As noticed above the only statement relied upon is that of Inspector Jagir Singh, who has no direct information regarding the alleged nefarious activities of the petitioner. He has referred to the statement of Rajinder Kumar @ Kala, who himself was an accused in the criminal case and is said to have disclosed during interrogation. The said Rajinder Kumar @ Kala has not been produced as a witness

in the inquiry proceedings.

11. There is nothing on record to show that either Rajinder Kumar @ Kala refused to appear or his presence could not be procured particularly when it is alleged that Rajinder Kumar @ Kala had signed a statement during investigation. This is apart from the question whether the signed statement of an accused during the investigation in police custody could be considered a reliable evidence in departmental proceedings. In my humble opinion, this evidence had no legal sanctity and apart from this, there is no other evidence on record. No material or evidence has been produced during the course of inquiry that the petitioner used to serve meal to the accused persons. Admittedly, petitioner was only a cook. He has specifically denied all allegations of service of meal to the accused persons or even the officials. In absence of their being any evidence that the petitioner had served meal to the accused Rajinder Kumar @ Kala the presumptuous allegation of access to the accused during the course of interrogation cannot be accepted. This is a case where the findings are based upon no evidence and are not sustainable in law. This petition accordingly succeeds. The Inquiry report and consequential order of dismissal dated 3rd January, 2008 (Annexure P-24) are hereby quashed. Resultantly, the petitioner is directed to be reinstated forthwith. He shall be entitled to all consequential benefits.