

(2011) 02 P&H CK 0462

High Court Of Punjab And Haryana At Chandigarh**Case No:** Regular Second Appeal No. 79 of 2009

Baljit Singh Constable

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision: Feb. 7, 2011**Acts Referred:**

- Arms Act, 1959 - Section 27
- Penal Code, 1860 (IPC) - Section 307, 397
- Punjab Police Rules, 1934 - Rule 16.3

Citation: (2011) 162 PLR 750**Hon'ble Judges:** L.N. Mittal, J**Bench:** Single Bench**Final Decision:** Dismissed

Judgement

L.N. Mittal, J.

This is second appeal by Plaintiff Baljit Singh Constable having failed in both the courts below. The Plaintiff, who is Constable in Punjab Police, was tried for offences under Sections 307 and 397 of the Indian Penal Code and Section 27 of the Arms Act in FIR No. 289 dated 05.09.1997 of Police Station Sadar Jalandhar. However, since the prosecution witnesses: turned hostile in that case, the Plaintiff was acquitted vide judgment dated 14.07.1999 passed by learned Additional Sessions Judge, Jalandhar. Thereafter, Defendant-Respondent No. 3 - Senior Superintendent of Police, Jalandhar initiated disciplinary proceedings against the Plaintiff. Inquiry Officer, however, exonerated the Plaintiff. Defendant No. 3 - disciplinary authority did not agree with the finding of the Inquiry Officer and served show cause notice dated 26.06.2000 on the Plaintiff stating therein reasons for disagreeing with the finding of the Inquiry Officer and also requiring the Plaintiff to show cause as to why punishment of stoppage of two annual Increments with cumulative effect be not imposed on him. The Plaintiff submitted his reply to the show cause notice. Defendant No. 3, vide order dated 06.09.2000, imposed punishment of stoppage of

one annual increment with cumulative effect on the Plaintiff. The said punishment was upheld in appeal by Defendant No. 4 (Deputy Inspector General of Police) vide order dated 09.02.2001 and in revision by Defendant No. 5 (Inspector General of Police) vide order dated 10.05.2001. The Plaintiff in the suit challenged the said order being null and void etc. and sought mandatory injunction directing the Defendants to grant all consequential benefits with interest.

2. Defendants defended the impugned punishment order, as upheld in appeal and revision. Grounds to challenge the same, as pleaded by the Plaintiff, were controverted by the Defendants. Various other pleas were also raised.

3. Learned Civil Judge (Junior Division), Jalandhar, vide judgment and decree dated 09.03.2006, dismissed the Plaintiff's suit. First appeal preferred by the Plaintiff has been dismissed by learned Additional District Judge, Jalandhar, vide judgment and decree dated 03.05.2008. Feeling aggrieved, the Plaintiff has preferred the instant second appeal.

4. I have heard learned Counsel for the parties and perused the case file.

5. Learned Counsel for the Appellant referred to Rule 16.3 of the Punjab Police Rules and contended that the Plaintiff could not be proceeded against departmentally after being acquitted in the criminal case on the same allegations. However, this contention cannot be accepted because Clause (b) of Rule 16.3(1) of the Punjab Police Rules provides exception, where, in the opinion of Superintendent of Police, the prosecution witnesses have been won over, the police official can be proceeded against departmentally also on the same charge. In the instant case, the prosecution witnesses turned hostile and therefore, Senior Superintendent of Police - Defendant No. 3, holding that the witnesses had been won over by the Plaintiff, decided to proceed departmentally against the Plaintiff. Consequently, disciplinary action initiated by Defendant No. 3 is not vitiated and is not in contravention of Rule 16.3 of the Punjab Police Rules.

6. Learned Counsel for the Appellant emphatically contended that while disagreeing with the finding of the Inquiry Officer, Defendant No. 3 should have recorded tentative finding giving reasons for the same and should have given opportunity of hearing to the Plaintiff to show cause against the proposed disagreement with the finding of the Inquiry Officer, but in this case, disciplinary authority straightway arrived at its own finding while disagreeing with the finding of the Inquiry Officer and issued show cause notice dated 26.06.2000 tentatively proposing the punishment of stoppage of two annual increments with cumulative effect, and therefore, principles of natural justice have not been complied with regarding disagreement with the finding of the Inquiry Officer, and consequently, the punishment imposed on the Plaintiff is vitiated. Reliance in support of this contention has been placed on judgment of Hon'ble Supreme Court in the case of Punjab National Bank and Ors. v. Sh. Kunj Behari Misra 1998 (3) RSJ 640.

7. On the other hand, learned Counsel for Respondents contended that by issuing show cause notice dated 26.06.2000, necessary opportunity of hearing was granted to the Plaintiff and therefore, punishment order is not vitiated.

8. I have carefully considered the rival contentions. In the show cause notice dated 26.06.2000, Defendant No. 3 - disciplinary authority recorded reasons for his disagreement with the finding of the Inquiry Officer and also proposed punishment of stoppage of two annual increments with cumulative effect and required the Plaintiff to show cause against the same. It is correct that vide aforesaid show cause notice, the Plaintiff was specifically not required to show cause against disagreement of Defendant No. 3 with the finding of the Inquiry Officer. However, composite show cause notice regarding disagreement with the finding of the Inquiry Officer and regarding proposed penalty was served on the Plaintiff and copy of Inquiry Report was also enclosed therewith. The Plaintiff submitted his reply to the show cause notice, wherein he also challenged the disagreement of Defendant No. 3 with the finding of the Inquiry Officer. It is thus manifest that the Plaintiff got opportunity of hearing to show cause not only against the proposed penalty, but also against disagreement of Defendant No. 3 with the finding of the Inquiry Officer. In other words, requirement of principles of natural justice has been substantially complied with in the instant case. The Plaintiff put forward his case in reply to the show cause notice and the same was duly considered by Defendant No. 3 - the disciplinary authority as well as by appellate and revisional authority. In this view of the matter, it cannot be said that the punishment order has been vitiated by noncompliance with principles of natural justice. On the contrary, principle of law laid down in the case of Punjab National Bank and Ors. v. Sh. Kunj Behari Misra (supra) has been substantially complied with. It may be added that in the said case, the question related to interpretation of relevant Regulation of the Appellant bank, which did not provide for opportunity of hearing to the delinquent, while the disciplinary authority disagreed with the finding of the Inquiry Officer. It was in this context that the Hon'ble Supreme Court observed that opportunity of hearing was required to be given to the delinquent before arriving at final finding disagreeing with the finding of the Inquiry Officer. In the instant case, by serving composite show cause notice recording reasons for disagreeing with the finding of the Inquiry Officer and proposing penalty of stoppage of two annual increments with cumulative effect, principles of natural justice were substantially complied with and therefore, the impugned punishment order, as upheld in appeal and revision, cannot be said to be vitiated in any manner.

9. For the reasons aforesaid, I find no merit in the instant second appeal. Accordingly, the appeal is hereby dismissed.