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SooperKanoon Citation : sooperkanoon.com/762667

Court : Rajasthan

Decided On : Dec-03-1992

Reported in : 1992WLN(UC)407

Judge : Rajendra Saxena, J.

Appeal No. : S.B. Civil Writ Petition No. 1913 of 1986

Appellant : Bagda Ram

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

Rajendra Saxena, J.

1. This writ petition filed under Article 226 of the Constitution of India seeks to quash the order dated 8.7.1986 (Ex.9) passed by the Dy. Inspector General of Police, Range, Jodhpur (respondent No. 2), whereby petitioner's appeal was dismissed and the order of the District Superintendent of Police, Jodhpur, dated 30.4.1986 (Ex. 7) inflicting penalty of removal from service & forfeiting all the remaining pay of the suspension period of the petitioner, was upheld, pursuant to a disciplinary enquiry held against him.

2. Briefly the relevant facts are that on 20.10.1973 petitioner was appointed as a constable by the Superintendent of Police Jodhpur (respondent No.

3) and that on the day of alleged incident he was posted as constable at the police out-post, Sojati Gate of Police Station, Sadar Bazar, Jodhpur. It is alleged that on 2.11.1985, the petitioner, who was on patrolling duty in his beat near Bata Company, Jodhpur, accompanied Bhagirath, Constable No. 1048 and went to Ghasmandi. There they illegally and forcibly detained one Tulcha Ram son of Rugha Ram Sirvi resident of Devi, and snatched away Rs. 580/- from him. Tulcha Ram complained of the said incident to the Superintendent of Police, and thereupon Circle Officer, City (East), conducted an identification test parade on the same day of the police constables of Sojati Gate, Merti Gate out posts and those of Police Station, Sadar Bazar. It is alleged that complainant Tulcha Ram identified petitioner Bagda Ram & constable Bhagirath. Constable Bhagirath admitted his guilt and returned Rs. 580/- to the complainant. Shri Onkar Singh, Circle Officer, City (East), Jodhpur, thereafter submitted a written report to the Superintendent of Police, whereon Crime No. 111/85 under Section 392 IPC was registered at Police Station, Sadar Bazar, Jodhpur against both constables vide FIR No. Ex. P.

4. However, after investigation a charge-sheet was filed against Bhagirath only and the petitioner was released under Section 169 Cr.P.C. The petitioner was suspended and a disciplinary enquiry under Rule 16 of the Rajasthan Civil Service (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as Rule, 1958) was initiated against him. He was served with a memorandum dated 15.11.1958 (Ex. 1), charge-sheet (Ex.

2) and statement of allegations (Ex.

3) for the alleged misconduct of gross remiss, indiscipline, dereliction in discharge of his duties and carelessness. The petitioner categorically denied the charges levelled against him vide his written statement of defence dated 29.11.1985. The Superintendent of Police by his order dated 15.2.1986 ordered to hold a regular enquiry against the petitioner and Bhagirath Ram and appointed the Circle Officer (Rural), Jodhpur as an Enquiry Officer. In the said enquiry, the Department examined P.W. 1 Tulcha Ram, complainant, P.W.

2. Onkar Singh, Dy. S.P. and PW 3 Pooran Singh, A.S.I. In defence, the petitioner produced D.W. 1 Navin Kumar & D.W. 2 Ashok Kumar. After discussing, analysing and evaluating the evidence, the Enquiry Officer held that from the statements of prosecution witnesses it was neither proved that the petitioner had snatched Rs. 580/- from Tulcha Ram, nor established that he had kept the said amount with him. He further held that even during the enquiry, the petitioner was not identified. He further held that as per statement of PW 2 Onkar Singh, Dy. S.P. at the time of alleged incident no role whatsoever was played by the petitioner. He, therefore, by his report dated 30.4.1986 (Ex.

6) held that the charges levelled against the petitioner were not proved. However, the Superintendent of Police, after receipt, of the enquiry report, without recording a statement of his finding together with brief reasons for disagreement with the findings of the Enquiry Officer, by his order dated 30.4.1986 (Ex.

7) held the petitioner guilty and inflicted a penalty of removal from service. He also forfeited the remaining pay and other allowance of the petitioner. Aggrieved by the said order, the petitioner filed an appeal to the D.I.G. Police Range, Jodhpur under Rule 23 of Rules, 1958, who by his order dated 8.7.1986 (Ex.9) dismissed the appeal. Hence, this writ petition.

3. I have heard the learned Counsel for the petitioner and the learned Addl. Government Advocate at length and perused the relevant record in extenso.

4. The learned Additional Government Advocate has raised a preliminary objection that since petitioner did not avail the alternate remedy of filing a review against the order of D.I.G., this writ petition is not maintainable.

5. It is true that a review petition could have been filed under Rule 32 of Rules, 1958, but it can not be said that it was an alternative efficacious remedy. In *V. Beta Swami v. Inspector General of Police (Tamil Nadu)* : AIR 1982 SC82 , it has been held that a writ petition can not be dismissed only on the ground of existence of alternate remedy i.e. review petition and that such remedy does not disentitle a petitioner to move to High Court under Article 226 of the Constitution of India. In the instant case, the responded No. 2 had already dismissed the appeal of the

petitioner and upheld the order of respondent No. 3 removing him from service and forfeiting his pay and allowance. Therefore, in my considered opinion no alternate efficacious remedy was available to the petitioner by filing a review petition, whose dismissal was a fait accompli. Therefore, the preliminary objection raised by the learned Addl. Government Advocate cannot be sustained and the same is hereby over ruled.

6. The learned Counsel for the petitioner has strenuously contended that the charge-sheet and statement of allegations Ex. 2 and Ex. 3 respectively were vague, indefinite and devoid of particulars in as much as it was not disclosed as to who was that constable, who in fact had snatched away the money from Tulcha Ram or whether the said amount was looted away jointly by the petitioner & Bhagirath Ram and as to what was the specific overt act or role of the petitioner during the alleged incident? It is further argued that not a single witness has deposed against the petitioner, and that the Enquiry Officer had also categorically exonerated the petitioner of the charges levelled against him, but still then the respondent No. 3 without disagreeing with the findings of the Enquiry Officer and without giving reasons thereof found the petitioner guilty of the charges levelled against him. According to Shri Shishodia the Disciplinary Authority did not care to record his finding on each charge and without applying his mind objectively and thus committed an illegality in holding the petitioner guilty and inflicting the penalty of removal and forfeiture of pay and allowance, which is grossly disproportionate. He has submitted that the Disciplinary Authority also did not supply the report of the Enquiry Officer to the petitioner, which has caused a serious prejudice to him. He has contended that the respondent No. 2 also committed an illegality in rejecting petitioner's appeal, because he specifically held that although the charge of extortion of money was not proved against the petitioner, but gave an altogether different finding that since at the time of alleged incident, the petitioner was with constable Bhagirath Ram and that he did not report the said incident to his superior police officer, he committed a misconduct of dereliction in discharge of his duties. Thus, the D.I.G. levelled a new allegation against the petitioner without framing any charge and remanding the case even without affording an opportunity to the petitioner for rebutting such charge.

7. The learned Addl. Government Advocate has submitted that though complainant Tulcha Ram has turned hostile still then the presence of the petitioner at the time of the alleged incident was established, which proves that the petitioner left his duties and committed a mis-conduct of dereliction in discharge of his duties. He has asserted that the petitioner was also negligent in discharge of his duties in not reporting the said incident to his superiors.

8. I have given my earnest consideration to the rival contentions. A careful perusal of the charge-sheet (Ex. 2) and statement of allegation (Ex.3) reveals that it has not been stated therein that as to who was the constable, who has in fact snatched/exorted the money from Tulcha Ram-complainant. The charge levelled against the petitioner is that he left his beat and accompanied constable-Bhagirath Ram to Ghasmandi. In Ex.2 and Ex.3, it has also not been clearly stated as to which of the constables had admitted his guilt and returned Rs. 580/-. There is also no allegation in the charge-sheet and in the statement of allegations that the petitioner had been negligent in his duties or had shown dereliction in discharge of his duties in not reporting the said incident to his superior police officer. Thus, the charge as well as the statement of allegations are conspicuously silent about the said mis-conduct and those are clearly vague, indefinite and devoid of material particulars regarding the alleged mis-conduct for which the petitioner has been found guilty.

9. The report of the Enquiry Officer dated 30.4.1986 (Ex.6) reveals that a Joint department enquiry under Rule 16 of Rules, 1958 was conducted by him against the petitioner and constable-Bhagirath Ram, but no order as required under rule 18 of the Rules, 1958 was passed, which has caused substantial prejudice to the petitioner.

10. Even from the evidence recorded in this case no such mis-conduct is proved against the petitioner. PW1. Tulcha Ram in his statement before the Enquiry Officer has stated that on the day of alleged incident while he was coming from Nai Sarak to Sojati Gate via Ghasmandi, 3-4 persons, who are in police uniform stopped him, that one of those persons asked him as to why he was loitering there and threatened him. He further stated that the other police personnels went away

while one constable, who had threatened him, forcibly snatched away Rs. 580/- from his pocket and went away. He stated that thereafter he phoned the police officers and was directed to go to City Police Station. He went to the said Police Station, where one Police Officer along with 10-15 constables in uniform were standing that the said Officer asked him to identify those persons, who had taken away the money from him and that thereupon, he had pointed out one of those constables. He told that, thereafter, the Dy. S.P. interrogated those police constables and gave Rs, 580/- to him after procuring his receipt. PW. 1 Tulcha Ram specifically stated that the two persons facing the departmental enquiry, meaning thereby, the petitioner and constable-Bhagirath, were not those persons, who had snatched away Rs. 580/- from him. He is most unambiguous and clear terms also stated that petitioner and Bhagirath Ram were not those persons whom he had identified during the test parade. Thus, the complainant Tulcha Ram has neither identified the petitioner nor stated that the petitioner had snatched the money from him. On the other hand from the statement of Tulcha Ram, the presence of the petitioner at the time of the alleged incident is not at all proved.

11. PW 2. Onkar Singh, Dy. S.P., Who was the Circle Officer, City (East), Jodhpur on the day of alleged incident has stated that on the direction of the Addl. S.P., he had gone to Police Station division 'A', where constables of the various out-posts and complainant Tulcha Ram were present, that he asked the complainant to identify those constables, who had snatched away the money from him and that thereupon, the latter had identified constable-Bhagirath by catching hold of his hand and that for petitioner-Bagda Ram, he had told that he was also present there when those constables had interrogated him. Onkar Singh further stated that constable Bhagirath had admitted his guilt and return Rs. 580/- which were given to Tulcha Ram after taking this receipt. Hence, the statement of Onkar Singh, Dy. S.P. does not find due corroboration from the statement of Tulcha Ram. It may also be mentioned here that Onkar Singh did neither make any note of the said test identification proceedings nor draw any report in the Rojnamcha nor file any such document during the disciplinary enquiry containing the report of the test parade.

12. PW 3 Pooran Singh, A.S.I. has simply stated that he has scribed the FIR (Ex.4) on the basis of report of Onkar Singh. Thus, Pooran Singh is not an eye-witness either of the alleged incident or 'of the so called test identification parade.

13. In rebuttal, DW 1 Navin Kumar-, whose general merchandise shop is situated inside the Sojal Gate near Bata Co. and DW 2 Ashok Kumar, whose betel shop is situated nearly Bata Co. have stated that on the day of alleged incident they had seen petitioner Bagda Ram, Constable from 7 p.m. to 11 p.m. on his duty near the crossing.

14. Thus, there was not an iota of evidence to prove that either the petitioner had left his beat duty and accompanied constable-Bhagirath Ram, or that he had stopped complainant Tulcha Ram and snatched any money from him. It has also not been proved that Tulcha Ram had identified the petitioner, Immediately after the alleged Incident. Thus, the Enquiry Officer had correctly scanned & evaluated the evidence recorded before him and given a clear finding that the charges levelled against the petitioner were not proved. The respondent No.3 in his order dated 30.4.1986 (Ex.7) after reproducing the report of the Enquiry Officer ad verbatim simply gave a finding that from the statement of PW 2 Onkar Singh and perusal of FIR (Ex.4) and the duty register, out-post, Sojati Gate, the charge levelled against both the delinquent employees, namely the petitioner and Bhagirath Ram were proved. However he did not give his reasons. The respondent No. 2. also neither disagreed with the findings of the Enquiry Officer nor recorded any reasons nor gave any specific finding on each charge which was essential. His findings are also not based on any evidence. It is, therefore, which was essential. His findings are also not based on any evidence. It is, therefore, clear that the Disciplinary Authority did not discuss, examine and scan the evidence objectively and wrongly held the petitioner guilty of the charges levelled against him. his finding is not based on record and is clearly perverse, because mere suspicion can not take the place of proof.

15. The D.I.G. (respondent No.2) in his impugned order (Ex.9) has extensively reproduced the order of respondent No.2 as well as the grounds of appeal incorporated in petitioner's memorandum of appeal and thereafter mentioned that

from the Departmental Enquiry it was clear that both the delinquent employees were loitering in Ghasmandi illegally and without any orders of their superiors, that in Ghasmandi, which is a red light area, they black-mailed Tulcha Ram and took money from him. He has further mentioned that it was true that complainant Tulcha Ram in his statement before the Enquiry Officer did not name petitioner Bagda Ram, but from the circumstances, his mis-conduct was proved. He further added that out of the said two delinquent employees, one of them took the amount from the complainant while the other did not. He has further mentioned that Bagda Ram is guilty of misconduct in not reporting the negligent act committed by Bhagirath Ram to the superior officers. The D.I.G., thus, concurred with the findings given by the respondent No. 3 and dismissed the petitioner's appeal. Therefore, it is evident that respondent No. 3 has made out a new charge against the petitioner of not reporting the alleged incident to his superiors. Admittedly the said new charge neither finds mention in the charges and statement of allegations levelled against the petitioner nor disciplinary enquiry against the petitioner. Hence the D.I.G. has found the petitioner guilty of an entirely new charge and inflicted the penalty without affording him an opportunity of hearing and adducing evidence in rebuttal. Therefore, in such circumstances, the impugned order Ex. 9 is palpably wrong and ex facie illegal, which deserves to be quashed.

16. No other point was passed before me.

17. In the premise of above discussion, this writ petition is allowed and the orders dated 30.4.1986 (Ex.7) and 8.7.1986 (Ex. 9) passed by the Superintendent of Police, Jodhpur and the Dy. Inspector General, Range, Jodhpur, respectively are quashed. The respondents are directed to reinstate petitioner Bagda Ram in service and to pay him his due pay and allowance and other consequential benefits. No order as to costs.