



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.749 of 2019

Reserved on: 01.08.2025

Date of Decision:12.08.2025

Hoshiar Singh

...Petitioner

Versus

The State of H.P. & others

...Respondents

Coram

Hon'ble Mr. Justice Satyen Vaidya, Judge

Whether approved for reporting? Yes

For the petitioner:

Mr. Sanjeev Bhushan, Senior Advocate
with Mr. Sohail Khan, Advocate.

For the respondents:

Mr. Gautam Sood, Deputy Advocate
General.

Satyen Vaidya, Judge

The instant petition has been filed for the following
substantive relief:

*“(a) That the impugned order Annexures PI, PK
& PL may kindly be set aside and quashed and
all the benefits of service be restored.”*

2. The petitioner was posted as Constable in the 3rd
Battalion, H.P. Armed Police. He was posted on guard duty at the
residence of Hon'ble Chief Minister Himachal Pradesh at Shimla.

3. On 18.02.2002, the petitioner was on duty at Post
No.5 in the residential complex of Hon'ble Chief Minister of the
State. At about 4:00 PM, one person allegedly intruded/

trespassed into the high security zone around the residence of the Hon'ble Chief Minister. The said trespasser sneaked into the premises through barbed wire and within few moments ran away leaving behind his bag.

4. The petitioner along with Sub Inspector Bhim Singh, Constable Shesh Ram No.689 and Constable Ram Pal No.886 were subjected to disciplinary inquiry.

5. The charges against the petitioner were framed as under:

Charge

You constable Hoshiar Singh No.718 along with other personnel of the battalion was deployed at Oak over Shimla for the security duty at the residence of Chief Minister H.P. On dated 18.02.2002 you were assigned sentry duty at sentry post No-5, for the period 1500 hrs to 1800 hrs. At about 1600-1615 hrs on this date one suspected man entered into the compound and disappeared unnoticed and unapprehended. A regular departmental enquiry for this lapse in duty was initiated against you among others and I was appointed Enquiry Officer. On the basis of your reply to the notice of summary of allegations and statements of prosecution witnesses, I, D.W. Negi, Dy.S.P. (E.O.) do hereby charge you as under:

1. *You as security personnel deployed at this moment of time failed in your preventive duty to notice the entry of this suspected person who entered from the area of responsibility of sentry at post No.3, ran a*

- distance of approximately 150 meters and disappeared from your AOR.*
2. *You also failed in your duty to apprehend this culprit and you are also charged for insufficient consequent efforts to apprehend the culprit.*
 3. *Your failure to perform duty diligently caused the culprit to sneak into the highly protected security compound and committed illegal criminal trespass.*
 4. *You are also charge sheeted for your failure to react as per occasion, which facilitated the culprit to disappear from the scene.*

You are hereby given opportunity to face and defend this charge and file your written reply and list of your defense witnesses within a week's – time."

6. The petitioner contested the charge. The inquiry officer *vide* inquiry report dated 01.08.2002 held charge Nos.1 & 4 proved against the petitioner.

7. The disciplinary authority concurred with the findings of inquiry officer and held the petitioner guilty of negligence amounting to grave dereliction of duty and professional incompetence. Accordingly, a notice was issued to the petitioner requiring him to show cause as to why the punishment of forfeiture of ten years' service permanently for the purpose of future increments be not imposed against him.

8. The petitioner replied to the show cause notice. The reply of the petitioner was not found satisfactory and accordingly the disciplinary authority *vide* order dated 27.10.2002 (Annexure PI) imposed punishment of 4 years of permanent service

forfeiture for the purposes of future increments against the petitioner.

9. The petitioner filed service appeal before the appellate authority, but the same was dismissed *vide* order dated 02.09.2003. Thereafter, a revision petition was filed by the petitioner which also met the same fate *vide* order dated 10.06.2004, hence this petition.

10. The petitioner has assailed the orders Annexures PI, PK and PL being perverse to the records. The case of the petitioner is that there was no evidence on record to prove any incriminating material against the petitioner. It has been submitted that the petitioner was on duty at Post No.5 inside the fenced area of residential complex of the Chief Minister. The alleged trespasser had neither trespassed through the area under his control nor he had exited from the said area. Thus, it is the case of the petitioner that neither the trespasser had entered the complex within his vision, notice or range nor at the time of exit by the said trespasser, there was any occasion for the petitioner to have intervened.

11. I have heard learned senior counsel for the petitioner, learned Deputy Advocate General for the respondents and have also gone through the record carefully.

12 The inquiry report has been placed on record as Annexure PF. From the perusal of the contents of inquiry report, one cannot find anything implicating the petitioner. Neither it has been mentioned as to how the petitioner was responsible in the entire episode nor has it been concluded that what were the specific acts of omission or commission on part of petitioner which could be termed either as dereliction of duty or misconduct. Thus, the final findings that charges No.1 and 4 stood proved against the petitioner are without any reasons or justification.

13. In the show cause notice dated 14.08.2002, the disciplinary authority purportedly had arrived at conclusion on the basis of records, relevant material of the departmental inquiry and the findings of inquiry officer, to hold the petitioner guilty of negligence amounting to grave dereliction of duty and professional incompetence. However, in the said order also, one cannot find any reasons or discussion for arriving at such a conclusion. The conclusions so arrived at are preceded only by narration of facts. The details of material that weighed with the disciplinary authority for arriving at conclusions have not been disclosed.

14. Similarly, while passing the punishment order dated 27.10.2002, only fact recorded by disciplinary authority against the petitioner is that he was called by the 'Sentry' deployed at

Post No.4 and the petitioner, who was talking to some person standing outside, did not make any effort to stop the suspected person. Apparently, for returning such finding, the disciplinary authority had relied upon preliminary inquiry report of the incident, which otherwise had faded away and lost relevance after holding of regular Disciplinary Enquiry. Except as above, again there is no reason or finding as to on what basis the petitioner had been found guilty.

15. In order to test the argument of the petitioner that the order passed by disciplinary authority is perverse, I had requisitioned the original record of inquiry. After having gone through the statements of 15 prosecution witnesses, I could not find any incriminating circumstance against the petitioner. None of the witnesses had stated that the alleged trespasser was within the sight or jurisdiction of petitioner or despite of having sighted the trespasser, he had failed to act. The only fact that has been substantiated is that the petitioner was on duty at Post No.5. It had come out from the defence of the petitioner itself that he did not come to know about the incident as the alleged trespasser had neither entered the complex from any area in his near vicinity nor the exit of said person had come to the notice of the petitioner. What has further been stated by the petitioner in his defence was that some person from outside the campus was

trying to make inquiries from the petitioner and petitioner had been answering to said queries.

16. The appellate and revisional orders also had no discussion on the evidence, if any, which could suggest any incriminating material against the petitioner. As noticed above, even in the entire inquiry report itself, there was not even a whisper about any evidence which was found incriminating against the petitioner.

17. Thus, the impugned orders dated 27.10.2002, 02.09.2003 and 10.06.2004, Annexures PI, PK & PL, respectively are clearly perverse as the findings recorded therein are not borne from the evidence recorded by the inquiry officer or any other material on record. In fact, the findings which are not based on evidence or otherwise not borne from the record are no findings in the eyes of law. The conduct of enquiry officer and the disciplinary authority clearly lacked fairness which by itself becomes antithetic to the principles enshrined in Article 14 and 16 of the Constitution of India.

18. The petitioner could be visited with civil and evil consequences of punishment only on proof of any misconduct or dereliction of duty on his part, but since the punishment has been sought to be imposed without proof of any incriminating

circumstance against petitioner, such a perverse action cannot be sustained.

19. In result, the petition is allowed. Order dated 27.10.2002, 02.09.2003 and 10.06.2004, Annexures PI, PK & PL, respectively are quashed and set aside. The respondents are directed to restore all the service benefits to the petitioner as were taken away as result of aforesaid orders.

20. The petition is accordingly disposed of along with pending application(s), if any.

(Satyen Vaidya)
Judge

August 12, 2025
(vt)