

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.3286 of 2019
Decided on: 17.09.2026

Satish Kumar

...Petitioner

Versus

Himachal Pradesh State Electricity Board and another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner: Mr. Dinesh K. Thakur, Advocate.

For the respondents: Mr. Piyush Rathore, Advocate.

Jiya Lal Bhardwaj, Judge (Oral)

The petitioner by way of present petition has prayed for the following substantive reliefs:-

- "i. To quash the orders dated 11-9-1998 (Annexure P-8), 11-12-2001, 7-1-2004 and 21-11-2011 (Annexure P-4) and the penalties so imposed may be held to be too harsh and excessive and further petitioner be held entitled to all consequential benefits.*
- ii. Three set of Orders dated 11-5-2009 passed by the Sr. Executive Engineer Electrical Division HPSEB Dehra, qua treating the suspension of 980 days w.e.f. 16-1-1990 to 21-9-1992 and 11-10-1989 to 12-1-1990(94 days) (Annexure P-5, P-6 & P-7), treating the said period as on extra -ordinary leave be also quashed and the said period be ordered to*

¹ Whether reporters of Local Papers may be allowed to see the judgment?

be treated as period spent on duty in the light of the provision of FR 54-A and FR 54-B as already discussed in para 13 of the writ petition with all consequential benefits.

- iii. That the respondents may kindly be directed to re-fix the pay, after expiry of the reduction period of 5 years w.e.f. 1.9.2003 i.e. at Rs. 6500 (or say 6300) instead of Rs. 4775 or at Rs. 6700 (or say 6500 instead of Rs. 4950 w.e.f. 1.9.2004 with all arrears.*
- iv. That the respondents may be directed to release the annual increments due since reinstatement in service, after revocation of suspension on 21/22.9.1992 till actual service rendered upto 5.2.1997, when convicted, with all arrears till August, 2005 and thereafter.*
- v. That the respondents may kindly be directed to release the pay and allowances including increments for the period from 16.1.1990 to 21.9.1992, when the suspension orders were revoked and the petitioner was reinstated in service, with all arrears of pay since then till August, 2005 and thereafter forthwith.*
- vi. That the action of the respondents in treating the period from 5.2.1997 to 17.2.1998 as dies-non, may be quashed and set aside and the petitioner may kindly be held entitled for all service benefits.*
- vii. That the orders/inaction of withholding annual increments w.e.f. 1992 to 1997 and then issuing the orders reducing the pay on 11.9.1998 w.e.f. 1.9.1998 to 1.9.2003 for the alleged same act/omission may be held illegal in view of the principle of double jeopardy."*

2. Shorn of unnecessary details, the key facts of the case are that petitioner, who was working as Driver with the respondent-Board under Electrical Division, Nadaun caused

accident on 04.10.1989 and an FIR was registered against him on 04.10.1989 under Sections 479, 338 and 304-A of the Indian Penal Code. Thereafter, he was put under suspension on 11.10.1989 and remained under suspension till 21.09.1992. He was reinstated in service on 22.09.1992 by the respondent-Board. During the suspension period, his Headquarter was fixed at Dehra w.e.f. 11.10.1989 to 16.01.1990 and thereafter from 17.01.1990 till 21.09.1992 at Baijnath.

3. The petitioner was convicted for commission of the aforementioned offences and underwent sentence w.e.f. 05.02.1997 to 06.07.1997 for 152 days. Thereafter, the petitioner was dismissed from service by the respondent-Board, vide order dated 11.04.1997.

4. The petitioner had approached the erstwhile Himachal Pradesh Administrative Tribunal (in short 'the Tribunal') by way of **OA(D) No. 28 of 1998** and when the matter was listed before the Tribunal on 26.03.1998, the same was disposed of in view of the fact that the respondent-Board had withdrawn the dismissal order and the petitioner was allowed to join his duties on 18.02.1998 and in view of this, no other and further orders were passed in the original application, except that due and admissible amount be paid to the petitioner within a period of one month from the date of

the order. The original application was accordingly disposed of.

5. After passing the aforesaid order by the Tribunal, the respondent-Board vide order dated 11.09.1998 (Annexure P-8) imposed a penalty of reduction to the lowest stage (initial stage) in the pre-revised scale of Rs.1350-30-1560-40-2000-50-2400 on the petitioner for a period of five years with cumulative effect and recovery of Rs.19896/- only being the cost of repairs to truck No.HPK-4462 was ordered. The petitioner did not assail the aforesaid order of penalty for three years and filled the appeal on 10.09.2001 which was dismissed on 11.12.2001, as time barred and on merits too. It was observed while dismissing the appeal that there is no ground for any further sympathetic consideration, as the petitioner has been re-engaged in service with little penalties though he happened to be an accused convicted in criminal charges.

6. The petitioner did not immediately assail the order passed in his appeal, which was dismissed on 11.12.2001 and approached the Tribunal in the year 2005 by preferring **OA(D) No. 324 of 2005**, which was transferred to this Court and registered as CWP-T No.2900 of 2008 (Annexure P-3). This petition was disposed of on 01.04.2011, when a direction was given to the Chairman of the respondent-Board to decide the appeal dated 18.03.2004, which was third appeal preferred by

the petitioner within a period of three months from the date of production of copy of the judgment, after affording an opportunity of being heard to him. Thereafter the Chairman of the respondent-Board has rejected the mercy appeal preferred by the petitioner vide office order dated 21.11.2011 (Annexure P-4) taking note of the fact that another appeal preferred by him was rejected by the Whole Time Member on 07.01.2004. The second mercy appeal dated 18.03.2004 received on 14.06.2011 is of similar nature and there is no new material in the appeal and, therefore, warrants no consideration since the matter has already been rejected by the highest level authority i.e. WTM of the board. As per provisions laid down under Rule 29-A of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, (in short 'CCS (CCA) Rules 1965'), a mercy appeal once rejected at the highest level can be reviewed only when any new facts or material, which have the affect of changing the nature of the case brought to the notice of competent authority.

7. The petitioner feeling aggrieved by the order of penalty dated 11.09.1998 and subsequent orders passed by the respondent-Board has challenged the same before this Court on the grounds that there was nothing in the penalty order to say that the order of suspension would be treated as

period of extraordinary leave. The said period treated as extraordinary leave deserves to be quashed and be treated as period on regular duty. It has been averred that before passing the impugned order of dismissal from service, no reasonable opportunity was afforded to him by the respondent-Board, which was subsequently withdrawn and thereafter imposed the major penalty of reduction to lower time scale of the post and stoppage of increments for 5 years with cumulative effect. The suspension period of 980 days w.e.f. 16.01.1990 to 21.09.1992 has been treated as extraordinary leave, which is wholly unjustified for the reason that the competent authority has not passed any such order while revoking the suspension of the petitioner. The period of suspension is required to be treated as period spent on duty for the reason that dismissal order of petitioner was withdrawn by competent authority. The action on part of the respondent-Board is violative of Articles 14 and 16 of Constitution of India and apparently is unconstitutional, illegal, arbitrary and discriminatory to the petitioner and as such liable for quashing.

8. The respondent-Board filed reply to the petition and in preliminary submissions averred that the petitioner was working as a regular Driver under Electrical Division, Nadaun and accident took place on 04.10.1989, while he was plying

the vehicle of the respondent-Board, on the basis of which a criminal case was registered against him and he was convicted by JMIC Dehra on 30.03.1992. After that, his services were dismissed by the Chief Engineer (OP) North, HPSEB Dharamshala, vide office order dated 11.04.1997, w.e.f. 05.02.1997 under Rule 19 (i) of the CCS (CCA) Rules, 1965. The dismissal order proposed was reviewed and vide order dated 11.09.1998, major penalty of reduction to the lowest initial stage of pre-revised pay scale of post and stoppage of increments for 5 years with cumulative effect was imposed upon the petitioner. The penalties imposed are much lower than the quantum of criminal case which was decided against him with his conviction by the trial Court. The dismissal order was reviewed and withdrawn by regularizing the suspension period, imprisonment period and period of absence from the duties, vide order dated 11.05.2009. Thereafter, the petitioner had filed the Original Application(D) No.324 of 2005, which was transferred to this Court and came to be registered as CWP-T No.2900 of 2008 and the same was disposed of on 01.04.2011 with a direction to the Chairman of the respondent-Board to decide the appeal. The petitioner was afforded an opportunity of hearing on 13.07.2011 and the claim of the petitioner was considered in consonance with the principles of natural justice

and his claim was found to be devoid of merit and same was rejected by the authority, vide order dated 21.11.2011. The claim was considered objectively and adequately keeping in view the provisions laid down under 29-(A) of the CCS (CCA) Rules, 1965 by the competent authority. Neither the legal nor vested right of the petitioner has been infringed or violated by the respondent-Board. There is no infirmity, legal or procedural in the impugned order and the competent authority has rightly rejected the appeal and thus, prayed for dismissal of the writ petition.

9. The petitioner filed rejoinder to the reply and controverted the averments made therein.

10. I have heard the learned counsel for the parties and also perused the record carefully.

11. Learned counsel representing the petitioner has vehemently argued that after the direction given by this Court, the Chairman of the respondent-Board has not properly adjudicated upon the appeal preferred by the petitioner, which was ordered to be decided by this Court. He further submitted that the penalty imposed upon the petitioner is disproportionate to the charges and as such the same is liable to be quashed and set aside.

12. On the other hand, the learned counsel

representing the respondent-Board has supported the decision and other orders under challenge. It was contended that though the petitioner was convicted for the commission of the offence by the competent Court of law, which fact has not been disputed by the petitioner, but still the respondent-Board had taken the sympathetic view when the order of dismissal passed against him was withdrawn and he was again taken break in service. Thereafter, the order of penalty was passed against him, which cannot be said to be disproportionate to the offence having been committed by the petitioner and hence, no interference is called for.

13. The petitioner while filing the petition has not disputed the facts that he was convicted in the FIR registered against him and further he had undergone sentence for 152 days. Normally, in such circumstances, where the person is convicted and further undergone the sentence, no employee can be retained in service, but the respondent-Board had though initially passed an order of dismissal of services of the petitioner, but subsequently had withdrawn the said order, as evident from a perusal of order dated 26.03.1998 passed by the Tribunal (Annexure P-2) and he was permitted to join his duties back on 18.02.1998. Thereafter, the respondent-Board had imposed the penalty as per office order dated 11.09.1998

(Annexure P-8) reducing the petitioner to the lowest stage (initial stage) in the pre-revised scale of Rs.1350-30-1560-40-2000-50-2400 for a period of five years with cumulative effect and also recovery of Rs.19,896/- only being the cost of repairs to truck No.HPK-4462 was ordered. The said order of penalty imposed by the competent authority was challenged by the petitioner on 10.09.2001 i.e. after three years and the Appellate Authority had dismissed the appeal being hopelessly time barred as well as on merits. It was observed that there are no grounds for any further sympathetic consideration, as he has been re-engaged. The order of Appellate Authority passed on 11.12.2001 has though not been placed on record, but the contents of relevant observation made in the order have been noticed by the Chairman of the respondent-Board in its order dated 17.11.2011, endorsed on 21.11.2011 (Annexure P-4), which reads as under:-

"The appeal is hopelessly time barred hence rejected. Besides on merit also there is no grounds for any further sympathetic consideration as he has been re-engaged in the service with little penalties though he happened to be an accused convicted in criminal charges."

14. After passing the aforesaid order on 11.12.2001, the petitioner remained mum for two years and filed another mercy appeal which was rejected on 07.01.2004. Thereafter,

he filed another second mercy appeal on 18.03.2004. Thereafter he instituted an original application before the Tribunal in the year 2005, which came to be registered as OA(D) No.324 of 2005. The same was transferred to this Court and registered as CWP-T No.2900 of 2008 and was disposed of on 01.04.2011, when a direction was given to decide the second appeal. From a perusal of the order passed by this Court on 01.04.2011, it seems that the petitioner had not informed the Court that the appeal earlier preferred by him had been rejected on 11.12.2001. Thereafter, an mercy appeal was dismissed on 07.01.2004. Even now, he did not place on record the said orders dated 11.12.2001 and 07.01.2004 though has prayed for quashing the same in the prayer clause.

15. The competent authority of the respondent-Board after direction given by this Court, has passed an order on 21.11.2011 (Annexure P-4), taking note of the fact that the appeal preferred by the petitioner was earlier rejected at the highest level on 07.01.2004 and the said decision can be reviewed only when any new facts or material, which have the effect of changing the nature of the case, come to the notice of the competent authority. Admittedly, in the present case, the petitioner who was convicted, was retained in the service by the respondent-Board and due to this reason, the petitioner did

not assail the order of penalty imposed upon him vide office order dated 11.09.1998 till 10.09.2001, knowing fully well that the respondent-Board had considered his case sympathetically and retained him in job. The petitioner was contented with the rejection of his appeal, vide order dated 11.12.2001 and due to this reason, he did not make any further challenge for two years. However, he submitted a second mercy appeal, which was considered and rejected in the 311th meeting of Whole Time Member of the respondent-Board on 07.01.2004. As already observed above the petitioner has though challenged this order in the writ petition, but copy of the decision has not been placed on record. It seems that he did not apprise the Court earlier when he got his petition disposed of that his appeal dated 18.03.2004 is pending before the respondent-Board. The petitioner did not challenge the aforementioned order dated 07.01.2004 and again preferred another appeal. However, when his appeal was not decided, he approached the Tribunal in the year 2005 and when the matter was listed before this Court on 01.04.2011, the above facts were not brought to the notice of the Court. Once the competent authority, after considering the entire matter had passed an order of penalty and the appeals preferred by the petitioner were dismissed twice on 11.12.2001 and 07.01.2004, which

orders have not been placed on record with the writ petition, the petitioner approached the Tribunal in the year 2005. After direction given by this Court the Chairman of the respondent-Board has passed a detailed order on 17.11.2011 endorsed on 21.11.2011 taking note of the fact that the appeal preferred by the petitioner has already been rejected by the highest authority i.e. the Whole Time Member of the Board as per the provision of Rule 29-A of the CCS(CCA) Rules, 1965 and that the mercy appeal duly rejected can be considered and reviewed only when any new facts or material which have the effect of changing the nature of the case come to the notice of the competent authority. In the case of the petitioner, no new facts have been brought to the notice and thus the appeal was rejected.

16. It is by now settled in catena of judgments of the Hon'ble Supreme Court that this Court is not constituted in a proceedings under Article 226 of the Constitution, a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It can exercise its power only if the rules of natural justice are not followed or the proceedings have been held in violation of statutory rules. A reference in this regard is made to a three-Judge Bench decision of the Hon'ble Supreme Court in ***State of Andhra***

Pradesh versus S. Sree Rama Rao, AIR 1963 SC 1723 and

the relevant para thereof reads as under:

"7. There is no warrant for the view expressed by the High Court that in considering whether a public officer is guilty of the misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court, must be applied, and if that rule be not applied, the High Court in a petition under Art. 226 of the Constitution is competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not constituted in a proceeding under Art. 226 of the Constitution a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: iris concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent Officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art. 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or ;where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High

Court in a proceeding for a writ under Art. 226 of the Constitution."

17. In the present case, it is not the case of the petitioner that the principles of natural justice have not been adhered to and further there is any violation of statutory Rules. It has only been stated that before passing the order of dismissal from service, no reasonable opportunity was afforded. Once the order of dismissal has been revoked and the petitioner was taken in service, the said plea is of any relevance. Further once the penalty of reduction in the lower stage has been passed, the period of suspension is required to be treated as period spent on duty, is again of no relevance. Hence, no interference is called for by this Court, more especially when the order of penalty has been tested before the Appellate Authority, which has dismissed the appeal on delay as well as on merits and thereafter first mercy appeal was dismissed by the Whole Time Member of the respondent-Board on 07.01.2004 and second mercy appeal dated 18.03.2004 by the Chairman of the respondent-Board on 12.11.2011.

18. Learned counsel for the petitioner has not been able to persuade this Court to defer with the conclusion arrived at by the Disciplinary Authority and upheld by the Appellate

Authority. As already observed above, this Court under Article 226 of the Constitution of India can only interfere with the order of penalty, if there is violation of the principle of natural justice or the statutory Rules have not been followed. In the present case, despite the fact that the petitioner was convicted by the competent Court of law, the respondent-Board had taken a sympathetic view when, even after passing the dismissal order, the same was withdrawn and the petitioner was retained in service and as such no interference is called for either with the order of penalty imposed by the respondent-Board or the appellate orders passed by the competent authorities.

19. Consequently, I do not find any merit in the present petition and the same is accordingly dismissed. No order as to costs. Pending applications, if any, also stand disposed of.

17th September, 2026

(Anurag)

**(Jiya Lal Bhardwaj)
Judge**