

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 14324 of 2015 (O&M)

Date of decision: 21.07.2015

Gurnam Singh

....Petitioner

Versus

Union of India and others

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Jagdeep Jaswal, Advocate
for the petitioner.

P.B. Bajanthri, J.

The petitioner has questioned the validity of the orders dated 06.01.2015 and 12.05.2015 of Central Administrative Tribunal, (for short 'CAT'), Chandigarh Bench. He also seeks quashing of the orders passed in the disciplinary proceedings.

The petitioner stated to be ex-serviceman, had joined railways as a Clerk in the year 1995. While he was working as Chief Store Material Superintendent in the year 2010 there were allegations against him and others relating to theft of store materials of the railways. Among others, petitioner was subjected to disciplinary proceedings. On 22.03.2012, the disciplinary authority initiated disciplinary proceedings against the petitioner. Four charges were framed. These charges are to the following

effect:-

“Article-1

That the said, Sh. Gurnam Singh , employee no. 804431 while working as DMS-1/ Steel Yard/Depot Ph-II , DMW/Patiala during the year 2010, committed the theft , by conniving with Civil officials, of 22 mm thick M.S. Plate , weighing 2724Kg. On 21.07.2010 and handed over the same to Sh. Karam Singh / Tindal/Depot Ph-1 for further unauthorizedly handing over to M/s Said Builders &Engineers. Loss of Rs. 12666/- would have been caused to the Railways, had he been successful in this theft.

This way Sh. Gurnam Singh tried to give undue favour to M/s Sai Builders & Engineers . By this act of theft, the said Sh. Gurnam Singh has failed to maintain absolute integrity and devotion to duty and thereby violated the provisions contained in Rule 3(1) (i)and (ii) of Railway Service (Conduct) Rules,1966.

Article-II

That the said, Sh. Gurnam Singh, employee no. 804431, while working as DMS-1Steel yard/Depot Ph-II DMW/Patiala during the year 2010, committed the theft of 22 mm thick plate on 16/07/10 by conniving with Civil and Store officials and handed over the same to M/s Said Builders &Engineers, who were awarded work for fabrication of gantry girder for the installation of over-head crane for extension of Power Pack Shop, thus playing a major role in inflicting direct financial loss of approx, Rs. 92191/-on Railways (for 1982.60Kg of 22 mm thick plate that was recovered from PPS construction Site)

Sh. Gurnam Singh gave undue favour to M/s Sai

Builders & Engineers by this act of the theft. The said Sh. Gurnam Singh has failed to maintain absolute integrity and devotion to duty and thereby violated the provisions contained in Rule 3(1) (i) and (ii) of Railway Services (Conduct) Rules, 1966.

Article-III

That the said Sh. Gurnam Singh , employee no. 804431 while working as DMS-I/Steel Yard/Depot Ph-II, DMW/Patiala during the year of 2010, failed to maintain the ground balance of 22 mm thick plate as per book balance, as verified during joint stock verification conducted by vigilance. The ground balance of 22 mm thick plate under question was in excess by 20390 Kg than the book balance, out of which 12914 kg was due to be lifted by the shop. Even then there was an excess of 7476 kg of this plate in addition to 1982.60kg recovered from PPS construction site, thus making the grand total of excess quantity in his custody equal to 9498.60 kg (involving an amount of Rs. 439825 @ Rs.46.50).

Thus, the said, Sh, Gurnam Singh has failed to maintain absolute integrity and devotion duty and thereby violated the provisions contained in Rule 3(1)(i)and(ii) of Railway Service (Conduct) Rules, 1966.

Article-IV

That the said, Sh, Gurnam Singh, employee no. 804431 while working as DMS-1/Steel Yard/Depot Ph-II,DMW/Patiala during the year 2010, failed to maintain the ground balance of items (Table-X)as per book balance, as verified during joint stock verification conducted by the vigilance.”

The petitioner submitted his reply denying the allegations stated in the charges on 06.08.2012. The disciplinary authority was not satisfied with the reply to the charge memo and proceeded with the enquiry. On 04.02.2013, the enquiring officer submitted his report holding that all the charges levelled against the petitioner were proved. Consequently, disciplinary authority issued a show cause notice along with enquiring Officer's report seeking explanation of the petitioner on the enquiring Officer's Report. The petitioner submitted his reply. The disciplinary authority after perusal of the enquiring Officer's report and reply of the petitioner passed a well considered order of imposing penalty of dismissal on 23.05.2013.

Aggrieved by the order of dismissal, the petitioner preferred an appeal before the Appellate Authority on 27.05.2013.

Since the petitioner's appeal was not considered he had approached the CAT, Chandigarh Bench. On 31.05.2013, CAT, Chandigarh directed the concerned authority to take an appropriate decision. Consequently, appellate authority modified the penalty of dismissal to that of removal from service. Aggrieved by the orders passed in appeal proceedings, the petitioner preferred revision petition. The revision petition was also dismissed. Thus, the petitioner filed Original Application before the CAT, Chandigarh Bench. On 06.01.2015, O.A. No. 1169 of 2013 filed by the petitioner was dismissed. Aggrieved by the order of the CAT, Chandigarh dated 06.01.2015, petitioner preferred CWP No. 3309 of 2015. The Division Bench of this Court disposed of the aforesaid CWP on 24.02.2015 on the submission made by counsel for the petitioner for

withdrawal of the writ petition with liberty to move an appropriate application before the Tribunal. Thereafter the petitioner preferred a review application before the CAT, Chandigarh Bench. On 12.05.2015, review application No. 060/00022/2015 and M.A. 060/00323/2015 (in O.A. No.1169/PB/2013) is dismissed.

The orders of the CAT passed in OA and RA and consequently orders passed in the disciplinary proceedings are under challenge in the present CWP.

Learned counsel for the petitioner vehemently argued that allegations were against petitioner and two others, whereas selective punishment has been imposed by the disciplinary authority. Common allegations are made against petitioner and 2 others and the same were subjected to disciplinary proceedings. In such matters, imposing different penalty on each of them is arbitrary. In other words, imposing major penalty of removal and taking lenient view on others, was discriminating. It was further contended that even though appellate authority has modified the penalty order from dismissal to removal from service, there is no much difference. The other contention is that the statements of Karan Singh and one Sh. Surinder Singh have been taken note of for the purpose of proving the charges whereas Sh. Karan Singh was one of the employee who is also subjected to disciplinary proceedings on the same very allegation. Therefore, relying on his statement is highly improper. The evidence of Karan Singh is not trustworthy since he was punished in the same enquiry while imposing the penalty of compulsory retirement. It was further contended that Sh. Dildar Shah, Supervisor was not examined in the proceedings even though

he was a prime witness. For an attempt to theft of store materials no FIR was lodged. It was also contended that disciplinary authority has not given personal hearing and there is total non-application of mind in passing the orders by various authority. He has also relied on various decision of the courts.

Heard learned counsel for the petitioner and perused the record.

Contention of the petitioner is that disciplinary proceedings were initiated against him and two others whereas petitioner was punished with major penalty of dismissal/removal from service but other employees were imposed with lesser penalty like compulsory retirement and withholding of increment with cumulative effect and therefore, there is a selective penalty imposed on the employees even though alleged charges are identical. It is to be noted that gravity of the charge has been taken note of while imposing the penalty therefore, the question of selective penalty imposition is not arbitrary. The petitioner was higher in rank and being a fairly senior officer cannot claim parity with lower staff.

The contention of the petitioner is that modification of penalty from dismissal to that of removal from service makes no difference even though appellate authority felt that penalty of dismissal from service was harsh. There is a difference between dismissal and removal. If an employee is dismissed from service he is not entitled for re-employment. At the same time if an employee is removed from service he is entitled for re-employment elsewhere. Therefore, there is a reason in imposing lesser penalty than dismissal.

It is contended that Karan Singh's statement cannot be relied in

the disciplinary proceedings against petitioner and proving the charge, for the reasons that he is also one of the co-delinquent employee. One of the allegations is that the petitioner had instructed Karan Singh to shift the store materials to a private firm. Karan Singh who is subordinate to the petitioner, had obeyed the same. Having regard to the aforesaid fact, the prime witness in the case of the petitioner is Karan Singh therefore, relying on the statement of the Karan Singh is very much relevant and in no way the petitioner is prejudice. Moreover Karan Singh was retired compulsorily as a measure of penalty in respect of same allegations.

Non-examination of Sh. Dildar Shah, Supervisor is in order for the reasons that he has been cited as a prosecution witness as well as defence witness. The enquiry officer has recorded the statement of the presenting officer as well as the petitioner in not procuring Sh. Dildar Shah for his evidence, since Sh. Dildar Shah had met with an accident and he could not attend the enquiry. This was not objected by the petitioner during the course of enquiry. Now he cannot turn around and contend that Dildar Singh ought to have been examined. In so far as non-filing of FIR against the petitioner and others would not be a hurdle for a disciplinary proceedings. Filing of an FIR is part and parcel of criminal proceedings whereas the disciplinary proceedings is different from criminal proceedings.

The disciplinary authority has not given personal hearing to the petitioner before inflicting punishment is an admitted fact. However, the said contention was dealt by the appellate authority that there is no provision of law or rule to give personal hearing before inflicting punishment.

In the matter of disciplinary proceedings the Court can interfere

only if there is violation of statutory provision or it is a case of no evidence.

In the present case, the petitioner's counsel has not pointed that there is a violation of statutory provisions in the disciplinary proceedings so also it is not a case of no evidence. Consequently, scope of judicial review is limited. In a recent decision of the Supreme Court reported in AIR 2015 SC 545 titled as ***Union of India and others versus P. Gunasekaran*** the circumstances in which writ courts can interfere in the matter of disciplinary proceedings, have been explained. An extract of the aforesaid decision is reproduced herein:-

13. "Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and*

merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.”

The petitioner's case does not fall under any of the principles stated above i.e., “a to i”. On the contrary, contention of the petitioner is to re-appreciate the evidence and seeking to interfere with the proportionality of punishment, which is impermissible. The petitioner has not pointed out the circumstances so as to shocks the conscience of this court so as to

modify the penalty of removal from service.

Having regard to the facts and circumstances of the case, we decline to interfere with the order of the CAT, Chandigarh, so also the orders passed in the disciplinary proceedings. The writ petition is dismissed.

No order as to costs.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

21.07.2015
pooja saini