

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

L.P.A. No.2146 of 2014 (O&M)

Date of decision: 20.02.2015

Naresh Kumar Kataria

-----Appellant (s)

V/s

Punjab and Haryana High Court, Chandigarh & others.

-----Respondent(s)

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE HARI PAL VERMA**

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

Present:- Mr. P.K. Ganga, Advocate
for appellant(s).

HARI PAL VERMA, J.

The instant appeal filed under Clause X of the Letters Patent is directed against the judgment dated 19.11.2014 rendered by learned Single Judge of this Court in CWP No.23679 of 2014, whereby the writ Court has dismissed the writ petition filed by the appellant against the order of his dismissal from service dated 16.06.2012 passed by respondent no.2.

The brief facts as stated in the writ petition are that the appellant joined service on 30.6.1992 at Sessions Division, Jalandhar. In the month of July, 2010, while he was posted as Execution Clerk in the Court of Additional

Civil Judge (Sr. Divn.), Gidderbaha, he was deputed to assist the receipt and dispatch clerk. It has been averred that respondent no.3 namely Arvinder Pal Singh Arora made a false story against him about postman and the dak, as he was not happy with the appellant. Respondent no.3 always used to demand money from the appellant to do the needful, but as the appellant refused to oblige him, he concocted a story against the appellant with a malafide intention. The appellant has been punished despite the fact that he has not consumed liquor. As per Dr. Surinder Arora and Dr. Ranjit Kaur, no smell of alcohol was found at the time of examination of the appellant. The appellant was served with a chargesheet (Annexure P1), stating therein that on 20.7.2010 at 10.50 A.M., the appellant had come present in the office in the drunken condition, which fact was brought to the notice of respondent no.2, who requested the Civil Judge (Sr. Divn.), Sri Muktsar Sahib to get his medical examination conducted from Civil Hospital, Sri Muktsar Sahib. Similar incidents of consumption of liquor were mentioned in the chargesheet (Annexure P1) for different dates. The appellant was served with a letter dated 17.8.2010 to explain his conduct regarding consumption of liquor in the office hours on 20.7.2010 and 10.8.2010. Appellant submitted his explanation on 26.8.2010 and denied the allegations levelled against him.

He was placed under suspension on 10.9.2010 and his headquarter was fixed at Malout during the suspension period. Appellant was served with a show cause notice dated 21.9.2010 regarding consumption of liquor during office hours. Another show cause notice dated 21.9.2010 was also served upon the appellant regarding his absence from duty on 19.7.2010 and reminder was also issued, asking the appellant to submit reply to the show cause notice, but the appellant did not produce any reply to the show cause notice. Finally, the appellant was called for personal hearing along with copy of reply to the show cause notice for 6.4.2011 and then for 20.4.2011. However, on 20.4.2011, appellant suffered a statement that he does not wish to file any detailed reply to the show cause notice which was served upon him on 21.9.2010. He requested that he may be pardoned and he shall remain careful in future.

As per the instructions contained in the Punjab Government Employees (Conduct) Rules, 1966, consumption of intoxicating drinks and drugs during the office hours are prohibited. The relevant rule reads as under:-

“Rule 22: Consumption of Intoxicating drinks and drugs. – Sub Rule (b), A Govt. employee shall not be under the influence of any intoxicating, drink or drug during the course of his

duty and shall also take due care that the performance of his duty at any time, is not affected in any way by the influence of such drink and drug;"

The chargesheet served upon the appellant was accompanied by statement of imputation of misconduct as well as leasing of documents and list of witnesses. Dissatisfied with the reply, Regular Enquiry Officer was appointed to conduct an enquiry against the appellant. The Enquiry Officer after examining the witnesses and the records held the appellant guilty of the charges. The relevant conclusions made by the Enquiry Officer read as under:-

"I have heard both the Presenting Officer and learned co-worker appearing on behalf of delinquent official and the undersigned has also carefully seen the entire record. The Presenting Officer of the department has successfully proved that on 20.07.2010 the delinquent official did not report for duty till 10.50 A.M. and when he appeared in the office of Superintendent, he appeared in drunkard condition regarding which the Superintendent in routine had sent information. Thereafter the Incharge District & Sessions Judge Miss Parveen Bali had directed Shri Gurnam Singh, CJ(SD) to get him medically examined from Civil Hospital and the doctor who medically examined him ruled out that the alcoholic smell was coming on account of

consumption of any alcohol based medicine and he gave a clear opinion that he had consumed alcohol. Subsequently on 10.08.2010 he went to the office of Superintendent of District & Sessions Judge, Sri Muktsar Sahib in drunkard condition for which the Superintendent has given a categoric statement and he has been thoroughly cross examined. But nothing has come out which goes against Superintendent to hold that he had made a wrong statement. No doubt the proceedings of being drunk conducted by the court of Jaswinder Singh are not on record, but the delinquent official has not refuted this fact in any way. Till a person remains on pay roll being a Government servant he is expected to behave as a gentleman. Even if he was under suspension, he can not be allowed to liter around in the Judicial Courts Complex in a drunkard condition. The categoric statements of the witnesses, opinion of the doctor and the admission on record and the evidence which is on record, is sufficient to hold him guilty for misconduct for which he has been charge sheeted. Therefore I hold him guilty. Let enquiry report be sent to the office of Learned District & Sessions Judge, Sri Muktsar Sahib.”

On the basis of the Enquiry Report, respondent no.2 while exercising powers conferred upon him under Rule 12(2) (ix) of the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 and Chapter 18-A of High Court Rules and Order, Volume 1 read with Rule 5 (ix) of the Punjab

Civil Services (Punishment & Appeal) Rules, 1970, ordered dismissal of the appellant from service vide order dated 16.6.2012. The appellant challenged the order of dismissal dated 16.6.2012 by way of Service Appeal before the Punjab and Haryana High Court, Chandigarh. However, the said appeal was dismissed on 18.2.2014

Challenging the Enquiry Report dated 19.1.2012, order of dismissal of the appellant from service dated 16.6.2012 and order dated 18.2.2014, vide which, the service appeal of the appellant was dismissed, the appellant filed CWP No.23679 of 2014 before this Court. The said writ petition was also dismissed by learned Single Judge vide impugned judgment dated 19.11.2014.

It is in the aforesaid circumstances, the appellant has filed the instant Letters Patent Appeal against the judgment dated 19.11.2014 passed in CWP No.23679 of 2014.

We have heard learned counsel for the appellant.

Learned counsel for the appellant has argued that a false and concocted story has been framed against the appellant that he was not present on his seat on 20.7.2010. The Chief Administrative Officer-cum-Superintendent of the office has wrongly reported to the District and Sessions Judge, Muktsar i.e. respondent no.2 that on 20.7.2010, the appellant appeared in his office at

about 10-50 AM in a drunken condition. He further argued that the appellant had long service to his credit and the punishment of dismissal from service is disproportionate to the charge framed against him. He further argued that he was not in drunken condition and no witness has deposed against him. In support of his contentions, learned counsel for the appellant has relied upon a judgment of this Court in the case of **Dhan Singh v. State of Haryana & others** 2008(3) SCT 816.

However, the case of **Dhan Singh** (*supra*) relates to absence from duty only whereas in the case in hand, the appellant is found guilty not only of absence from duty, rather found guilty of consuming alcohol during the office hours on different occasions and therefore, this judgment is of no help to the appellant and is not applicable.

The charges proved against the appellant are serious. The enquiry officer has inducted the appellant of the charges and it is on the basis of gravity of allegations, the respondent no.2 decided to serve a chargesheet upon the appellant. This Court has very limited jurisdiction to interfere in the disciplinary proceedings and can interfere with the decisions of departmental authorities only if such authority has held the proceedings in violation of principles of natural justice or in violation of statutory regulations while prescribing the mode of such enquiry or if the

decision of such authority is vitiated by considerations extraneous to the evidence on the merits of the case. Reference may be made to judgment of Hon'ble the Supreme Court in **Registrar General, High Court of Patna Vs. Pandey Gajendra Prasad & others** (2012) 6 SCC 357, wherein it has been held that the power of the Court of judicial review is limited. Para 18 of the said judgment reads thus:-

“18. It is trite that the scope of judicial review, under Article 226 of the Constitution, of an order of punishment passed in departmental proceedings, is extremely limited. While exercising such jurisdiction, interference with the decision of the departmental authorities is permitted, if such authority has held the proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such enquiry or if the decision of the authority is vitiated by consideration extraneous to the evidence on the merits of the case, or if the conclusion reached by the authority, on the face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. (See: High Court of Judicature of Bombay Vs. Shashikant S. Patil & another (2000) 1 SCC 416).”

The question of quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Court under

Article 226 of the Constitution of India is very limited, as held by the Hon'ble Apex Court in the case of **Om Kumar & others v. Union of India** (2001) 2 SCC 386.

The power of judicial review is to examine the decision making process and not the decision itself. The Hon'ble Supreme Court in **Tata Cellular Vs. Union of India** (1994) 6 SCC 651 upon detailed consideration of the parameters within which judicial review could be exercised in matters relating to contracts, has culled out the following principles:

“**70.** It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. *The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State.* The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral

purpose the exercise of that power will be struck down.

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77. The duty of the court is to confine itself to the question of legality. Its concern should be:

- (1) Whether a decision-making authority exceeded its powers?
- (2) committed an error of law,
- (3) committed a breach of the rules of natural justice,
- (4) reached a decision which no reasonable tribunal would have reached, or
- (5) abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) **Illegality:** This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) **Irrationality,** namely, **Wednesbury unreasonableness.**
- (iii) **Procedural impropriety.**

The above are only the broad grounds but it does not rule out addition of further grounds in course of time.”

Later in **Nirmala J. Jhala Vs. State of Gujarat**, (2013) 4 SCC 301, the court extended the said principles in the matter of the departmental proceedings. It has been held to the following effect:

“22. It is settled legal proposition that judicial review is not akin to adjudication on merits by re-appreciating the evidence as an appellate authority. The only consideration the Court/Tribunal has in its judicial review, is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence. The adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the Court in writ proceedings. (Vide *State of T.N. v. S. Subramaniam* (1996) 7 SCC 509, *R.S. Saini v. State of Punjab* (1999) 8 SCC 90 and *Govt. of A.P. v. Mohd. Nasrullah Khan* (22006) 22 SCC 373)

23. In *Zora Singh v. J.M. Tandon* (1971) 3 SCC 834 this Court while dealing with the issue of scope of judicial review, held as under: (SCC p. 838, para 10)

“10. ... The principle that if some of the reasons relied on by a Tribunal for its conclusion turn out to be extraneous or otherwise unsustainable, its decision would be vitiated, applies to cases in which the

conclusion is arrived at not on assessment of objective facts or evidence, but on subjective satisfaction. The reason is that whereas in cases where the decision is based on subjective satisfaction *if some of the reasons turn out to be irrelevant or invalid, it would be impossible for a superior court to find out which of the reasons, relevant or irrelevant, valid or invalid, had brought about such satisfaction.* But in a case where the conclusion is based on objective facts and evidence, such a difficulty would not arise. If it is found that there was legal evidence before the Tribunal, even if some of it was irrelevant, a superior court would not interfere *if the finding can be sustained on the rest of the evidence. The reason is that in a writ petition for certiorari the superior court does not sit in appeal, but exercises only supervisory jurisdiction, and therefore, does not enter into the question of sufficiency of evidence.*"
(emphasis added)

24. The decisions referred to hereinabove highlights clearly, the parameter of the Court's power of judicial review of administrative action or decision. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a court of appeal but, it merely reviews the manner in which the decision was made. The Court will

not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for the Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision-making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene.”

The said principle was again restated in the following words in **Kalinga Mining Corporation Vs. Union of India & others**, (2013) 5 SCC 252:

“62. It is by now well settled that judicial review of the administrative action/quasi-judicial orders

passed by the Government is limited only to correcting the errors of law or fundamental procedural requirements which may lead to manifest injustice. When the conclusions of the authority are based on evidence, the same cannot be reappreciated by the Court in exercise of its powers of judicial review. The Court does not exercise the powers of an appellate court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi-judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available that the Court would be justified to interfere with the decision. The scope of judicial review is limited to the decision-making process and not to the decision itself, even if the same appears to be erroneous.”

The argument that the Court in exercise of power of judicial review should substitute the order of punishment of dismissal from service to that of compulsory retirement, while considering long service of 18 years rendered by the appellant, is again not tenable. In **B.C.Chaturvedi Vs. Union of India & others** AIR 1996 SC 484, the Hon’ble Supreme Court held that the High Court while exercising its power for judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. It is only, if the punishment

imposed by the Disciplinary Authority shocks the conscience of the High Court, it would appropriately mould the relief. Even the said part has been said to be not available with the Court in exercise of the powers of judicial review vested in this Court under Article 226 of the Constitution of India. The scope of power of this court in exercise of judicial review has been examined by the Supreme Court in number of cases. In **Union of India Vs.**

K.G. Soni, (2006) 6 SCC 794, the court observed as:

“**14.** The common thread running through in all these decisions is that the court should not interfere with the administrator’s decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in *Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corporation* (1947) 2 All ER 680 (CA) the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in the decision-making process and not the decision.

15. To put it differently, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigations it may, in

exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.

16. The above position was recently reiterated in *Damoh Panna Sagar Rural Regional Bank v. Munna Lal Jain* (2005) 10 SCC 84.

17. The High Court has not kept the correct position in view. It has not even indicated as to why the punishment was considered disproportionate and why it considered the misconduct to be not serious.”

In **Chairman & Managing Director, V.S.P. & others Vs. Goparaju Sri Prabhakara Hari Babu** (2008) 5 SCC 569, the Hon’ble Supreme Court held that the jurisdiction of the High Court in departmental proceedings is limited. Its power to interfere with disciplinary matters is circumscribed by well-known factors. It cannot set aside a well-reasoned order only on sympathy or sentiments. Having said so, the Court observed as under:

“21. Once it is found that all the procedural requirements have been complied with, the Courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The Superior Courts only in some cases may invoke the doctrine of

proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved. [See *Sangeroid Remedies Ltd. v. Union of India & Ors.* [(1999) 1 SCC 259].

22.The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India also cannot, on the basis of sympathy or sentiment, overturn a legal order.”

In **State of Meghalaya & others Vs. Mecken**

Singh N. Marak, (2008) 7 SCC 580, the Hon’ble Supreme Court observed as under:

“14. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of the High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefor. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. In the impugned order of the High Court no reasons whatsoever

have been indicated as to why the punishment was considered disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.

15. While considering the question of proportionality of sentence imposed on a delinquent at the conclusion of departmental enquiry, the court should also take into consideration, the mental set-up of the delinquent, the type of duty to be performed by him and similar relevant circumstances which go into the decision-making process. If the charged employee holds the position of trust where honesty and integrity are inbuilt requirements of functioning, it would not be proper to deal with the matter leniently. Misconduct, in such cases has to be dealt with iron hands.”

In **Charanjit Lamba Vs. Commanding Officer, Army Southern Command & others** (2010) 11 SCC 314, the Hon’ble Supreme Court observed that the quantum of punishment in disciplinary matters is something that rests primarily with the disciplinary authority. The jurisdiction of a writ Court or the Administrative Tribunal is limited to finding out whether the punishment is so outrageously disproportionate as to be suggestive of lack of good faith. The Court observed as under:

“20. What is clear is that while judicially reviewing an order of punishment imposed upon

a delinquent employee the Writ Court would not assume the role of an appellate authority. It would not impose a lesser punishment merely because it considers the same to be more reasonable than what the disciplinary authority has imposed. It is only in cases where the punishment is so disproportionate to the gravity of charge that no reasonable person placed in the position of the disciplinary authority could have imposed such a punishment that a Writ Court may step in to interfere with the same.”

In the case in hand, the Enquiry Officer while submitting Enquiry Report has held the appellant guilty of the charges on the basis of categorical statement of the witnesses, opinion of doctor, admission on the part of the appellant and the evidence on record. The findings recorded by the Enquiry Officer have been duly considered and accepted by the punishing authority and it is only on the basis of the conclusion drawn by the Enquiry Officer, the disciplinary authority has taken a decision to dismiss the appellant from service. The plea of the appellant that he has put 18 years of service and his case ought to have been considered for compulsory retirement instead of awarding the punishment of dismissal, is without any basis, as observed in the judgments referred above. The scope of interference in the matter of imposition of sentence is very limited, more particularly when the appellant kept

on repeating the act of absence from duty and visited the office under the influence of liquor. The Appellate Authority while dismissing the appeal has also observed that the delinquent official kept on repeating the act of absence from duty one after the other and twice visited the office of Superintendent under the influence of liquor. Even on medical examination conducted on 20.7.2010, his breath was found smelling of alcohol. He was also fined under Section 510 IPC vide judgment dated 4.11.2011 for causing nuisance at a public place on 3.11.2011 in an inebriated condition. He was not only censured by the District and Sessions Judge, Sri Muktsar Sahib vide order dated 26.9.2011, but vide order dated 1.10.2011, the punishment of stoppage of one annual increment without cumulative effect was also awarded against him for remaining absent from duty on 19.7.2010 from 4.25 p.m. to 5.00 p.m., on 5.8.2010 from 1.30 p.m. to 5.00 p.m. and on 6.8.2010 from 1.30 to 3.20 p.m.

Since the charge against the appellant of coming to the office in an inebriated condition twice is serious in nature and the case is of continued misconduct indicating incorrigibility and unfitness of the appellant for serving in a disciplined organization, as he has also acted in derogation to the prestige of the institution, the appellant has placed his official position in an embarrassing situation and

behaved in a manner which is unbecoming of a Government employee.

In view of serious allegations of continued misconduct against the appellant, we do not find that the punishment of dismissal from service imposed upon the appellant is outrageous disproportionate or shocking to the conscience of this Court. The Enquiry Officer has given categoric findings which have been accepted by the disciplinary authority and accordingly, the order of dismissal has been passed.

Therefore, we do not find that the impugned order dated 19.11.2014 passed by learned Single Judge, whereby the writ petition filed by the appellant against his dismissal from service, warrants any interference of this Court.

Consequently, the present appeal is dismissed.

(HEMANT GUPTA)
JUDGE

(HARI PAL VERMA)
JUDGE

February 20, 2015
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