

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

**Regular Second Appeal No. 3965 of 2005 (O&M)
Date of Decision: 13.1.2016.**

State of Punjab and others

.....Appellants

Vs.

Gurmit Singh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Neeraj Yadav, AAG, Haryana.

Mr. K.S.Lakhanpal, Advocate
for the respondent.

.....

SABINA, J.

Respondent had filed suit for declaration challenging the order dated 10.7.1995 of his dismissal from service.

Case of the respondent, in brief, was that he had joined as a Constable on 14.12.1990. On 5.11.1992, respondent was falsely implicated in FIR No. 99/1992 under Section 279/337 of the Indian Penal Code, 1860, registered at Police Station South, Chandigarh. Respondent was acquitted of the charges framed against him by the Trial Court. The claim petition filed by Raja Ram was dismissed by the Motor Accident Claim Tribunal vide its award dated 1.4.1995. Charge sheet was issued to the respondent on the ground that he had remained absent from duty. Thereafter show cause notice was issued to the respondent. In his reply, respondent clarified that he had never absented from duty. However, respondent was ordered to be

dismissed from service on the basis of enquiry report and his previous service record by the punishing authority vide order dated 24.12.1993. The said order was upheld by the Appellate Authority vide order dated 6.4.1994. Revision filed by the respondent against the order passed by the Appellate Authority was dismissed vide order dated 10.7.1995 being time barred.

Defendants, in their written statement, averred that the respondent-plaintiff joined as a Constable with Punjab Armed Police on 14.12.1990. It was further averred that respondent was a habitual absentee and had been awarded punishment in this regard on number of occasions. The details of punishments awarded to the respondent as mentioned in para 1 of the written statement read as under:-

- “1. He was awarded the punishment of censure due to absence from duty vide order No. 4000-03/R dated 22.10.91.*
- 2. He was again awarded the punishment of censure due to negligence in duty vide order No. 4344-46/R dated 28.9.93.*
- 3. He was again awarded the punishment of censure due to absence from duty and his absence period from 1.9.93 to 78.9.93 = 7 days treated as non duty period vide order No. 4788-91/ST dated 10.12.1993.*
- 4. As a result of departmental enquiry held against him due to absence from duty, his one year approved service was forfeited with permanent effect for increments vide order No. 5013-18/ST dated 24.12.93.”*

It was further averred that regular departmental

enquiry was ordered against the respondent as he had remained absent for 54 days 22 hours and 15 minutes from 20.4.1993 to 7.7.1993. The Enquiry Officer submitted the report that the charges levelled against the respondent stood proved and on the basis of the said report, after issuing show cause notice to the respondent, he was dismissed from service with effect from 25.12.1993.

On the pleadings of the parties, following issues were framed by the Trial Court:-

1. *Whether the plaintiff is entitled for declaration as prayed for? OPP*
2. *Whether the plaintiff is entitled for any mandatory injunction as prayed for? OPP*
3. *Whether the suit of the plaintiff is not maintainable? OPD*
4. *Whether the plaintiff has no cause of action ? OPD*
5. *Whether this Court has no jurisdiction ? OPD*
6. *Relief.”*

The Trial Court vide judgment/decreed dated 27.2.2001 set aside the impugned order and held that the respondent was entitled to be reinstated in service without back-wages and without benefit of continuity of service and respondent was ordered to be put in the minimum time scale from the date he resumed his duty. Appeal filed by the State against the said judgment/decreed was dismissed by the First Appellate Court vide judgment/decreed dated 7.6.2005. Hence, the present appeal by the appellants-State.

Learned State counsel has submitted that once the

Civil Court had come to the conclusion that the enquiry held against the respondent was legal, then it could not go into the merits of the case and could not interfere with the quantum of punishment.

Learned counsel for the respondent, on the other hand, has submitted that the punishment imposed on the respondent was harsh and the Courts below had rightly ordered that the respondent was entitled for reinstatement in service.

In the present case, the substantial question of law that arises for consideration is as to whether the Civil Court has the power to interfere in the quantum of punishment where the procedure adopted by the punishing authority is in accordance with the rules and natural justice.

Respondent was issued charge sheet on the allegation that he had remained absent from duty and that his past record was not satisfactory. Respondent admitted in his cross-examination that he had received the copy of charge sheet. He also admitted that he had given in writing to the Enquiry Officer that he did not want to lead any defence evidence. On the basis of the report of the Enquiry Officer, show cause notice was issued to the respondent and he submitted his reply to the said show cause notice. Thereafter, the order dated 25.12.1993 was passed whereby the respondent was ordered to be dismissed from service. Respondent filed an appeal against the order of his dismissal from service and the same was dismissed by the Appellate Authority vide order dated 6.4.1994. Thereafter, respondent preferred a revision and the same was dismissed by the Inspector General of Police vide order dated 6.7.1994.

Learned counsel for the respondent has failed to point out any procedural error in the departmental proceedings.

It was further the case of the department that the respondent was a habitual absentee.

Hon'ble Apex Court in '**B.C. Chaturvedi versus Union of India and others**', **1996 AIR (SC) 484**, has held as under:-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of [Evidence Act](#) nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the

charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented. The appellate authority has co-extensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. *In Union of India v. H.C. Goel* [(1964) 4 SCR 781], this Court held at page 728 that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the

record or based on no evidence at all, a writ of certiorari could be issued.

14. In Union of India & Ors. v. S.L. Abbas 1995(4) SCT 455 (SC) : [(1993) 4 SCC 357]: when the order of transfer was interfered by the Tribunal, this Court held that the Tribunal was not an appellate authority which could substitute its own judgment to that bona fide order of transfer. The Tribunal could not, in such circumstances, interfere with orders of transfer of a Government servant. In Administrator of Dadra & Nagar Haveli v. H.P. Vora [(1993) Supp. 1 SCC 551 : 1993(1) S.C.T. 124], it was held that the Administrative Tribunal was not an appellate authority and it could not substitute the role of authorities to clear the efficiency bar of a public servant. Recently, in State bank of India & others v. Samarendra Kishore Endow & another, 1994 (2) SCT 250 (SC) : [JT (1994) 1 SC 217], a Bench of this Court to which two of us (B.P. Jeevan Redey & B.L. Hansaria, JJ.) were members, considered the order of the Tribunal, which quashed the charges as based on no evidence, went in detail into the question as to whether the Tribunal had power to appreciate the evidence while exercising power of judicial review and held that a Tribunal could not appreciate the evidence and substitute its own conclusion to that of the disciplinary authority. It would, therefore, be clear that the Tribunal cannot embark upon appreciation of

evidence to substitute its own findings of fact to that of a disciplinary/appellate authority.

Thus, in the present case, the Courts below erred in interfering with the quantum of punishment awarded to the respondent as the Court had no power to interfere with the order of punishment while acting as an Appellate Authority. The findings recorded by the disciplinary authority could not be interfered with as the scope of judicial review by the Civil court is limited.

The question of law that arises in the present case stands answered accordingly. Consequently, the appeal is allowed. Impugned judgments/decrees passed by the Courts below are set aside.

**(SABINA)
JUDGE**

January 13, 2016
Gurpreet