

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

LPA No.382 of 2016 (O&M)

Date of decision: 14.03.2016

Er. Nath Ram Garg

----Appellant

Versus

The State of Punjab and another

----Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.R.D. Bawa, Advocate
for the appellant.

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent Act has been filed against the judgment dated 20.01.2016 of the learned Single Judge, whereby, CWP No.18076 of 2003 filed by the appellant for quashing the charge-sheet dated 04.05.1999 (Annexure P-2), the enquiry report dated 03.8.2004 (Annexure P-19) and the final order dated 28.05.2009/01.06.2009 (Annexure P-22) has been dismissed.

The appellant, who was holding the post of Superintending Engineer was served with a charge-sheet dated 04.05.1999 containing three allegations, namely negligence and

misuse of powers as Superintending Engineer; being responsible for causing a loss of ₹28.70 lacs to the Government in remitting compensation with malafide intention; and being responsible for excess payment of ₹6,26,186/- to the contractor in connivance with Balbir Singh Executive Engineer and Varindra Constructions Company, Bagha Purana.

A contract pertaining to National Highway-15 Baze Khaana to Bathinda from KM 258.33 to 285.06 was allotted to Varindra Constructions on 29.11.1991. It was to be executed within 18 months i.e. upto 26.05.1993. The agreement contained a clause for payment of compensation for delay in case of default in completing the project within the stipulated time. Initially, extension of time limit for completion of the project was given upto 30.06.1995 but when the Contractor failed to complete the project even within the extended time, the Executive Engineer imposed a penalty of ₹28.70 lacs on 11.07.1995. The Contractor appealed against the same. The then Superintending Engineer Subhash Malhotra stayed the recovery of fine which stay was even extended on more than one occasions.

However, the appellant vide order dated 25.04.1997 (Annexure P-24), while granting time to remove the shortcomings, reduced the compensation to Nil and directed the Executive Engineer to finalize the bill and withheld only an amount of ₹20,000/- from the security deposit of the contractor. Considering the waiver of compensation to be a case of grant of undue benefit to the

Contractor, the appellant was charge-sheeted. A regular enquiry was initiated. The Enquiry Officer held the charges to be proved. It was concluded that despite delay on the part of the Contractor, he was arbitrarily exempted from the penalty imposed upon him and the appellant was held guilty of misuse of powers. After giving the appellant due opportunity to show cause punishment of 25% cut in the pension was imposed.

Learned Single Judge held that the appellant could not point out any breach of statutory rules or procedure in the conduct of enquiry and the principles of natural justice had been complied with. It could not be established that the authority issuing the charge-sheet lacked competence to do so. The judgment of Hon'ble the Supreme Court in **Vishwanath Sood Vs. Union of India and another [AIR 1989 SC 952]** relied on by the appellant was distinguished by holding that the case dealt with therein was under the Arbitration Act where determination of compensation for delay in execution being made final by the agreement could not be subject matter of arbitration, but the present case was one of the misconduct during service in conferring undue benefit on the contractor.

The scope of judicial review in the matter of disciplinary proceedings being limited, and there being no procedural or other infirmity in the disciplinary proceedings, the writ petition was rightly dismissed.

Learned counsel for the appellant has argued that the findings of the Enquiry Officer are contrary to the record and that

there were valid reasons for the delay in execution of the work by the contractor as there was deficiency in supply of bitumen by the department and it was this reason which led to the delay in completion within time. Consequently, the action of the appellant in reducing the compensation for delay to NIL was not arbitrary or malafide.

The appellant is seeking to argue on merits of findings of the enquiry officer, which is impermissible in judicial review.

We find no infirmity in the order of the Ld. Single Judge and the present appeal is dismissed. Consequently, the accompanying applications are dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 14, 2016
Atul