

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

**CWP- 5314-2007 (O&M)
Date of decision: 26.04.2017**

Anurag Vashishtha

.....Petitioner

versus

The Haryana Financial Corporation and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldeep Singh

Present: Mr.Amit Jhanji, Advocate for the petitioner
Mr.Dhiraj Chawla, Advocate for the respondents

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldeep Singh, J.

Petitioner has approached this Court under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the order dated 17.2.2000 (Annexure P10) passed by respondent no.1, vide which, the petitioner has been dismissed from service. He has also sought quashing of the order dated 17.7.2006 (Annexure P17) passed by respondent no.2, whereby his departmental appeal has been dismissed. Petitioner also sought the writ of Mandamus to reinstate him with full back wages and all consequential benefits and also sought release of CPF, Gratuity, leave encashment and other service benefits.

The facts of the case as made out from the pleadings are that the petitioner was working as an Additional General Manager with the Haryana Financial Corporation. He was the incharge of the leasing section.

There were allegations against the petitioner being incharge of the leasing

section as well as Shri Ajit M. Sharan, IAS, Managing Director and one Manisha Gupta, Leasing Manager, Haryana Financial Corporation regarding irregularities and illegalities in grant and certain acts and omissions, regarding advancements of finances to various firms and companies. The petitioner was placed under suspension vide order dated 11.8.1996 (Annexure P1). He was served with 17 charge sheets in the year 1996. Other two officers i.e. Shri Ajit M. Sharan, IAS, Managing Director Sanctioning Authority and one Manisha Gupta, Leasing Manager were also charge sheeted. Petitioner claimed that the Managing Director was not competent to pass the order of the suspension. Petitioner further claimed that he was not the final authority to clear the each case. He was working only on supervisory capacity. Board of Directors of the respondent Corporation has delegated the authority to the Managing Director to sanction, release, lease finances and to implement the leasing schemes/ operations. Petitioner was duty bound to follow the instructions of the Managing Director. Collateral securities were cleared by the legal division headed by the inquiry officer Shri Sudhir Verma. The securities were later on found to be fake. Therefore, the entire blame could not be shifted to the Leasing Division headed by the petitioner. It was further stated that the respondent Corporation also lodged as many as 8 FIRs in the year 1996 and 1997 in the leasing cases (Annexure P5). In all the cases, the petitioner has either been discharged or acquitted. It is further stated that originally Shri B.R. Goyal was appointed as an Enquiry Officer. However, on the objection of the petitioner, Shri Sudhir, who was Head of the Legal Division was appointed as an Enquiry Officer. Two Presenting Officers were appointed, namely, Subhash Arora and K.R.Iyyer. Enquiry Officer was legally qualified having

degree of LLB. One Pankaj Mittal, Manager (Leasing) was also associated with the inquiry proceedings on behalf of the respondent Corporation, whereas no legal assistance was provided to the petitioner. Enquiry Officer hurriedly concluded the inquiry proceedings on 30.12.1998. Petitioner was given show cause notice dated 2.7.1999 (Annexure P8). Petitioner submitted his reply, which was to be considered by the Administrative Division, which was headed by the Enquiry Officer himself. Petitioner was dismissed from service on 17.2.2000 (Annexure P10). Managing Director had passed the order of the dismissal. The matter was not forwarded to the Board of Directors and no prior approval of the Board of Directors was obtained. Petitioner further claimed that cases could not be cleared without the clearance being given by Sudhir Verma, who was heading the Legal Division. Petitioner preferred an appeal under Regulation 43(b) of the Regulations 1967. Since the appeal was not decided for more than seven months, the petitioner filed CWP No.16884-2000 challenging the illegal suspension and illegal order of dismissal. This Court vide order dated 8.12.2000 (Annexure P12) directed the Board of Directors to consider and decide the appeal within two months from the date of receipt of certified copy of the order. Therefore, vide order dated 15.2.2001 (Annexure P13) the appeal was rejected without calling the petitioner for personal hearing. The order of rejection of appeal by Board of Directors was signed by respondent no.4. It is further stated that the charge sheets relates to equipment leasing cases and sub-leasing cases. Regarding equipment leasing cases, site visit was not conducted at the time of appraisal by the Appraising Officer. Regarding sub-leasing cases, it is alleged that the copies of the Registration Certificate (R.C.), insurance cover notes were not

obtained before subsequent release. The Managing Director vide order dated 8.3.1994 had directed that lease cases be finalized within a period of three days. Petitioner has suggested the period of 15 days and that the visit to the industrial unit may not be necessary. The proposal of the petitioner was affirmed by the then General Manager Shri U.S.Chadha. The then Managing Director did not approve this proposal. Each case is to go to the Managing Director for approval. Managing Director could approve the site visit before finalizing the same. In sub-leasing cases, the lease associates were required to provide 100% collateral security and submit the post dated cheques of lease rental for entire lease term and given personal guarantees, promissory notes etc. It is stated that the petitioner could not be held responsible for the procedural lapses. In this case, the petitioner as well as Manisha Gupta, Leasing Manager and Shri Ajit M. Sharan, IAS, Managing Director were charge sheeted. Petitioner as well as Manisha Gupta approached this Court by way of CWP No.3808 of 2001 and 15689 of 2003. The writ petition of Manisha Gupta, Leasing Manager was disposed of on 13.4.2004 (Annexure P14) by remanding back the same to the Board of Directors for passing a fresh order after giving adequate opportunity of hearing to the petitioner. Writ petition of the petitioner was also disposed of in view of Manisha Gupta's case. It is further stated that vide order dated 9.11.2005 (Annexure P18), Manisha Gupta has been reinstated in service. Appeal of the petitioner has been dismissed. It is further stated that regarding similar charges against Ajit M. Sharan, IAS, the Chief Secretary found that there are no procedural lapses and accordingly, he was exonerated. Petitioner further stated that he should have been given same treatment.

In the written statement, respondents have not denied the passing of the impugned orders. Respondents have justified the passing of the impugned orders stating that the petitioner was not merely a forwarding hand on the report of the leasing Manager to the Managing Director, who was the sanctioning authority. In fact, the petitioner was the head of the leasing division. He was supposed to verify the facts mentioned in the report submitted to him by the junior officer. Therefore, it does not lie with him to state that he was only the forwarding hand. It was admitted that the State Government had initiated disciplinary proceedings against the then Managing Director of the Corporation but charges were dropped after the inquiry as nothing could be substantiated against him. Mrs. Manisha Gupta, Leasing Manager was also dismissed from service. The Board of Directors after considering the facts and granting her opportunity of hearing, came to the conclusion that at no point of time, her immediate superior brought out the procedural lapses to her notice either verbally or in writing. It was also observed that the procedural lapses noticed against her may be attributed to her inexperience as a young direct entrant in the services of the Corporation. Therefore, she was reinstated in service. The fact that the petitioner was neither the appraising and processing officer nor sanctioning and disbursing authority has no relevance with his liability under the charges. It was stated that he was found guilty of the charges. He was given fair and full opportunity. Therefore, the order of dismissal was correctly passed. It was also stated that Regulation 19(2)(b) was deleted by the Board of Directors in the meeting held on 1.11.1996 and was notified in the gazette notification dated 11.8.1997 (Annexure R1/1). It was stated that the word employee used in Regulation 41(4) also includes the officer. It was further disclosed

that one Manoj Arora, Manger Leasing was also dismissed from service on 30.7.2000. Petitioner violated the norms and guidelines and procedure. Reference was also made to the 8 FIRs, registered by the Corporation. It was also stated that in the 3 FIRs name of the petitioner appeared in the challan. It was asserted that a fair inquiry was held. The orders have been correctly passed.

I have heard learned counsel for the parties and have also carefully gone through the file.

It comes out from the pleadings that there were three officers, present petitioner, who was Additional General Manager Leasing and was head of the Leasing Department, Manager Leasing, Manisha Gupta, then there was a Managing Director, Shri Ajit M. Sharan, IAS, who was sanctioning authority. Manisha Gupta was also appraisal officer and was appraising the documents. It also comes out from the report qua her placed on file that it was found that she was direct entrant and inexperienced officer, therefore, her dismissal order was modified and she was reinstated in service. The copies of the charge sheets placed on file goes to show that some fake documents were produced to obtain financial assistance from the Haryana Financial Corporation. There were 17 different charges against the petitioner regarding 17 different companies/ firms.

The perusal of the charges shows that these are very serious in nature. In some of the cases fake addresses were given. In other cases, fake documents were produced and without obtaining appropriate documents, the financial assistance was advanced. I am of the view that the petitioner being the Additional General Manager and Head of the Leasing Department had the overall supervisory control over his department. Therefore, it was

for him to ensure that rules and regulations are followed and that the documents are got duly checked up. The fake documents could have been verified. The petitioner was not supposed to act merely on whatever documents/file are advanced to him by his Manager Leasing. The petitioner was an experienced officer. It was not a casual one or two cases where such irregularities were committed, rather these were several cases numbering 17 regarding 17 firms, which means that it had become routine to produce the fake documents, give fake addresses and obtain the financial assistance. The sanctioning authority merely acted on the basis of the recommendations of the petitioner. The legal departmental merely gave its legal opinion.

Powers of the High Court in exercise of jurisdiction under Articles 226/227 of the Constitution of India, for interference in the departmental inquiries are well settled.

In Union of India and others vs. P.Gunasekaran, 2015(2) SCC 610, the Hon'ble Apex Court laid down the following principles:-

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 same view was reiterated by the Hon'ble Apex Court in High Court of Gujarat vs. Hitendra Vrajilal Ashara and another, 2015(2) SCT 89.

In State Bank of India and others vs. Ramesh Dinkar Punde, 2006(4) SCT 61, it was held by the Hon'ble Apex Court that disciplinary

proceeding is not a criminal trial and standard of proof required is that of preponderance of probability and not by proving beyond reasonable doubt. Therefore, the High Court cannot act as an appellate authority and interfere by re-appreciating the evidence.

Therefore, if the said principles are applied, it comes out that a fair opportunity of hearing was given to the petitioner. He led evidence. He raised objections regarding one inquiry officer and he was changed. The mere fact that there were two Presenting Officers does not itself mean that the case of the department became strong. The petitioner could always claim the assistance of a legal practitioner, if he so desired. Petitioner himself being in the rank of Additional General Manager was a qualified person and understood the proceedings.

Learned counsel for the petitioner has argued that in the earlier writ petition, the case was remanded to the Board of Directors. The Board of Directors did not apply its mind and merely affirmed the order passed by the Managing Director. The perusal of the order of the Board of Directors dated 17.7.2006 (Annexure P17) shows that all the contentions raised by the petitioner were duly discussed. The factum of reinstatement of Manisha Gupta was also discussed and reasons for the same were also given. It was observed that the respondent Corporation suffered financial losses. Petitioner did not follow the eligibility criteria stipulated under the Scheme in obtaining and analyzing the performance of Sub lessor companies resulting in ineligible borrowers being financed, who finally defaulted in repayment of obligations, thereby putting the Corporation in huge financial losses. The Board concluded that it was an act of gross negligence on the part of the petitioner. The mere fact that it was also observed that the order

of dismissal passed by the then Managing Director is found to be well reasoned, is only one of the ground. In any case all the grounds put forward by the petitioner have been discussed and consequently appeal has been dismissed. There is no error in the order of Board of Directors dismissing appeal vide order Annexure P17.

Learned counsel for the petitioner has vehemently argued that in this case discrimination has been made. Shri Ajit M. Sharan, IAS, Managing Director and Manisha Gupta, Leasing Manager have been dealt with favourably, whereas the petitioner has been dismissed from service. The petitioner claims parity with the said officers.

I am of the view that since Shri Ajit M. Sharan, IAS, Managing Director was the officer belonging to Indian Administrative Services, therefore, action was taken by the Chief Secretary, who after examining his role, dropped the proceedings against him. The role of the said Managing Director was different. He merely acted on the recommendations of the petitioner. The role of Manisha Gupta, Leasing Manager, has been duly discussed and a lenient view has been taken on account of her being new entrant. Case of the petitioner is on different footing. He was an experienced officer of the rank of Additional General Manager and was the controlling officer. Therefore, the authority of Hon'ble Apex Court in Union of India and others vs. Tejvir Singh, MANU/SC/1351/2002, N.C. Arora VS. State of Haryana and others 1997(1) S.C.T. 206 of this Court and Ratnakar P.M. vs. UCO Bank through its Regional General Manager, Mumbai and others of Bombay High Court are not attracted in the present case.

As discussed above, this Court is to see whether proper

procedure has been followed and whether there is any ground to interfere in the said inquiry report and punishment order on the grounds mentioned in the aforesaid judgments?

I find that there is no ground to interfere in the findings of the inquiry officer to replace the findings of the inquiry officer with the findings of this Court. Principles of natural justice were duly complied with. There is no parity between the petitioner and other two officers, referred to by him.

The mere fact that in the criminal cases, the petitioner was discharged or acquitted, is no ground to hold that the charges against the petitioner in the departmental inquiry are not proved. Yardstick for proof in criminal cases and the departmental proceedings are entirely different. Therefore, the discharge/ acquittal in the criminal cases is no ground to hold that the charges against the petitioner in the departmental inquiry are not proved.

Consequently, there are no merits in the present writ petition and the same is accordingly dismissed.

26.04.2017

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

Yes