

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 278

Regular Second Appeal No.4640 of 2014 (O & M)
Date of Decision: July 26, 2017

Gurcharan Singh

..... APPELLANT

VERSUS

State of Punjab & Another

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. H.K. Brinda, Advocate, for the appellant.

Ms. Sudeepti Sharma, Additional Advocate General,
Punjab.

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Jaspal Singh, J

1. The instant regular second appeal has been preferred by the appellant – plaintiff against judgment & decree dated February 26, 2013 passed by the Additional Civil Judge (Senior Division), Ropar whereby suit filed by the plaintiff has been dismissed as well as judgment & decree dated March 31, 2014 passed by the Additional District Judge (Fast Track Court), Rupnagar, vide which, appeal filed by the plaintiff against decision of the trial court has been dismissed.

2. Appellant – Gurcharan Singh instituted a suit for declaration on the grounds that he is an employee of State of Punjab, Department of Home and posted as ASI in the office of SSP, Ludhiana. While he was

three days from September 16, 2004 to September 19, 2004 but on September 20, 2004 he could not resume his duty as he met with an accident and suffered multiple injuries. He remained hospitalized and could resume duty on November 08, 2004. He was chargesheeted and regular departmental enquiry was initiated. After conclusion of enquiry proceedings, Punishing Authority awarded him punishment of forfeiture of two years' approved service towards two future increments on permanent basis vide order dated December 30, 2005 which was delivered to him on January 20, 2006. Plaintiff preferred an appeal before the Appellate Authority (Deputy Inspector General of Police, Ludhiana Range, Ludhiana) who modified the said order for forfeiture of one year's service towards one increment vide order dated April 13, 2006. Plaintiff preferred a revision petition which was also dismissed on December 22, 2006 by the Revisional Authority i.e. Inspector General of Police, Zonal-II, Jalandhar. Consequently, plaintiff instituted the instant suit challenging the aforesaid orders being non speaking, against the Punjab Police Rules, law of natural justice, equity, good conscience and unconstitutional.

3. The suit was contested by the respondents – defendants. Issues were framed and parties led evidence. After hearing learned counsel for the parties and appreciating the evidence as well as documents on file, suit filed by the plaintiff was dismissed vide judgment & decree February 26, 2013 passed by the Trial Court while holding that Civil Court will not act as an Appellate Court and re-assess the evidence led in the departmental enquiry. The Lower Appellate Court affirmed the findings recorded by the Trial Court and dismissed the appeal filed by the plaintiff vide its judgment & decree dated March 31, 2014.

4. While assailing the impugned judgments & decrees passed by the courts below, learned counsel for the appellant has ebulliently argued that the same are absolutely against the evidence available on file as well as settled canons of law. Misappreciation and misreading of evidence as well as legal proposition has resulted into miscarriage of justice. The courts below have wrongly dismissed the suit of plaintiff despite the fact that he had proved on record that orders passed by the respondents – defendants are illegal, null & void and against the principles of natural justice. The work & conduct of appellant – plaintiff remained satisfactory during his entire service. Though, Enquiry Officer had exonerated the plaintiff of the charges of willful absence, but Punishing Authority erroneously held him guilty while ignoring the fact that plaintiff had informed the authorities regarding his absence due to accident. Sufficient opportunity of hearing was not given to the plaintiff before passing the impugned orders against him. So, findings recorded by the courts below are not sustainable in the eyes of law and impugned judgments & decrees are liable to be set aside by way of acceptance of the instant appeal.

5. Per contra, learned counsel for the respondents – State has supported the judgments & decrees passed by the courts below. It has been submitted by her that the findings recorded by both the courts are concurrent and do not call for any interference by this Court.

6. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and gone through the documents available on file but does not find any factual or legal substance in the submissions of learned counsel for the appellant.

7. Plaintiff instituted the suit challenging orders dated October

though he was exonerated by the Enquiry Officer, but no cogent reason was assigned by the Punishing Authority to disagree with the report of Enquiry Officer. Plaintiff was posted at CIA Kharar in September 2004. He proceeded on leave for three days but failed to join duty for 49 days 21 hours. Regular departmental enquiry was initiated against him in which he was exonerated by the Enquiry Officer but Punishing Authority contradicted with the enquiry report and awarded punishment of forfeiture of two years' service towards two future increments.

8. Now, the first and foremost question for determination in the instant case is whether the Disciplinary Authority can take a dissenting view than enquiry report furnished by the enquiry officer. Appellant availed leave but did not join the duty on the ground that he met with an accident and remained hospitalized. DSP, Kharar was appointed as an enquiry officer who exonerated the appellant holding that he met with an accident and was taking treatment due to fracture of ribs and ankle of his left foot. The Disciplinary Authority wrote a dissenting note (Ex. D-3) that if appellant met with an accident, he could have informed the SHO or MHC of the concerned Police Station through telegram but he failed to do so. From the statement of Gurdeep Singh, Incharge, CIA, Kharar, it revealed that before his telephonic communication, he was already declared absent from duty vide Rapt No.09 dated September 20, 2004. Had he been innocent, he could have cross examined the aforesaid witness. As he could not prove his absence beyond his control, he was held willfully absent from duty. Thereafter, a show cause notice was issued to the appellant. In this view of matter, there is no fault with the findings of the Punishing Authority in taking a view that appellant willfully absented himself from duty.

after serving upon show cause notice, is not illegal or perverse and has been awarded after following the due procedure.

9. The appeal against the punishment awarded to the appellant was partly accepted by the Appellate Authority and it was reduced to forfeiture of one year service towards one future increment.

10. As regards contention of learned counsel for the appellant – plaintiff referring to the statement of Dr. Surjit Singh, Civil Hospital, Ropar, recorded during enquiry proceedings that injuries sustained by the appellant in the accident have been duly proved; as per report made by SSP Ropar, enquiry witness has stated during his cross examination that before receiving the telephone call, Rapat No.9 dated September 20, 2004 regarding absence of appellant – plaintiff was entered; and the fact about appellant's inability to join duty was duly intimated but these facts have been ignored by the Punishing Authorities. It is well settled proposition of law that civil court is not competent to interfere with findings of disciplinary authority. The Civil Court cannot sit as a court of appeal over the departmental proceedings. Departmental enquiry against the appellant – plaintiff was held guilty in accordance with due procedure and statutory rules. A perusal of the oral as well as documentary evidence clearly shows that appellant – plaintiff was afforded full opportunity of hearing, to cross examine the witnesses and to submit reply. Thus, this Court is of the considered opinion that fair and impartial enquiry was conducted against the appellant, after following due procedure and the appellant – plaintiff could not prove his stand in the departmental proceedings.

11. In case **Subhash Chand vs. National Bank for Agriculture & another**, 2006(1) SCT 659, Hon'ble Jammu & Kashmir

“Departmental Proceedings- Natural justice- if the employee is afforded various opportunities, but he did not avail the same for no valid reasons, he cannot complain of violation of principles of natural justice.”

12. This Court in **Shiv Lal Sharma vs. Commissioners & Secretary, Forest Department Haryana, Chandigarh & others, 2009(4)**

SCT 39 held as under:-

“The scope of judicial review regarding interference with punishment order is very limited. The jurisdiction of the Civil Court is only to see the method/manner of awarding punishment. The Court is only concerned with the procedure adopted by the Punishing Authority. If the procedure adopted by the Punishing Authority is according to rules and natural justice, then no interference with the punishment order is called for. The Civil Court cannot go into the merits of the case. In case, the finding of the Inquiry Officer is based on some evidence, then the Court cannot reappreciate the evidence or weigh the same like the Appellate Authority. So long as there is some evidence in support of the conclusion arrived at by the departmental authority, the same has to be sustained. Some defects in the inquiry has to be pointed out before the Civil Court can interfere with the punishment order. Further more, if defect is pointed out then the delinquent employee has to show as to what prejudice has been caused to him on account of the said defect. The Court exercising jurisdiction of judicial review is not to interfere with the finding of the fact arrived at in a departmental inquiry excepting in a case of *mala fide* or perversity.

The finding recorded by the disciplinary authority is immune from interference within the limited scope of power of judicial review applicable to the Court.

Plaintiff was working as a Range Officer and was to get replacement of trees upto 10%. However, the same was not done. The allegations against the petitioner is that he had misappropriated the funds while he was working as a Range Officer. Plaintiff was duly served with a chargesheet (Exhibit D5) along with relevant documents. However, plaintiff did not file any reply to the chargesheet. After completion of inquiry, inquiry report was submitted to the disciplinary authority by the Inquiry Officer. Notice of the inquiry report was also served upon the plaintiff and he filed the reply (Exhibit D12) to the same. Plaintiff was afforded personal hearing vide Exhibit D13 and thereafter, the impugned order was passed. Recovery of loss suffered by the department was

also sought to be made from the plaintiff. Since the plaintiff had caused loss of 73,509.75, the same was liable to be recovered from the plaintiff.

Learned counsel for the appellant has failed to point out any procedural error in the inquiry proceedings.”

13. This Court in another case **Ram Kishan vs. State of Haryana & others** (CWP No.23220 of 2010, decided on April 02, 2014)

observed as under:-

“The appellate authority while passing the order dated 29.10.2010 has taken into consideration the complete facts and circumstances and after going into the contents of the appeal and comments which were received from the Division Forest Officer, Sonapat and thereafter proceeded to decide the appeal wherein it was stated that the order of recovery from the petitioner has been passed correctly.

No provision has been pointed out by the counsel for the petitioner that the statutory rules mandate personal hearing in an appeal preferred by an employee. In the absence of any such requirement under the statute, the arguments as raised by the counsel for the petitioner that the petitioner was not granted an opportunity of personal hearing by the appellate authority would not vitiate the order passed by the appellate authority dated 29.10.2010 (Annexure P-8).

In view of the above, the impugned orders being in accordance with law do not call for any interference by this Court.”

14. From the aforementioned authoritative decisions also, it is clear that this Court cannot act as an Appellate Authority with regard to the punishment order passed by the competent authority after following due procedure.

15. In the light of what has been discussed above, this Court is of the considered view that no substantial question of law arises in this case which would warrant interference by this Court.

16. Dismissed.

14. No order as to costs.

July 26, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No