

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

CWP-27513-2015 (O&M)

Date of Decision:01.02.2018

Vijay Kumar

... Petitioner

Vs.

Union of India and others

... Respondents

CORAM : HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present : Mr. Subhash Ahuja, Advocate for the petitioner.

Mr. R.S. Malik, Advocate for respondents No.1 and 2.

Ms. Ranjana Shahi, Advocate for respondents No.3 and 4.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the inquiry report and the orders passed by the disciplinary as well as appellate authority.

2. Petitioner while working as a clerk had assigned the duty of collecting money from the Municipal Committee for the purpose of distributing old age, physically handicapped pension etc. He collected money on 15.6.2007 to the extent of Rs.7700/-. However, collected money was not remitted with his superiors for the purpose of distributing. When this was brought to the notice of the petitioner on 13.7.2007, he had remitted. Thus, there is a temporarily misappropriation of Government money that too which was ear marked for distribution to old age, widow and physically handicapped pensioners etc. Charges levelled against the petitioner were proved. Consequently, disciplinary authority imposed penalty of dismissal. Thereafter, appellate authority modified the penalty of dismissal to that of compulsorily retirement. Petitioner has not made out a case raising any legal issue so as to interfere with the inquiry report as well

as the orders of the disciplinary and appellate authorities.

3. Supreme Court in the case of **Union of India and others** v. **P. Gunasekaran**; (2015) 2 SCC 610 held as under:

“12. 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, reappreciating even the evidence before the enquiry officer. The finding on Charge 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 Articles 226/227 of the Constitution of India, shall not venture into reappreciation 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.*

13. Under Articles 226/227 of the Constitution of India, the

High Court shall not:

- (i) reappreciate 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.”*

In view of the above principle laid down by the Supreme Court, petitioner has not made out a case.

Accordingly, petition stands dismissed.

01.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**