

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 6480 of 2016 (O&M)
Date of Decision: February 01, 2018

Shiv Shankar Bhagat

... Petitioner

Versus

Punjab and Haryana High Court.

... Respondent

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

Present: Mr. S.P. Soi, Advocate,
for the petitioner.

Ms. Divya Sharma, Advocate,
for the respondent.

P.B. Bajanthri, J. (Oral)

1. In the instant petition, petitioner has prayed for the following relief:-

“b) to issue a writ in the nature of quashing the impugned order dated 12.11.2014 Annexure P-7 order dated 24.2.2014 Annexure P-5 and the order dated 10.2.2016 (Annexure P-12) vide which claim of the petitioner for promotion has been declined with effect from the date the other junior persons have been promoted along with inquiry report dated 4.10.2013 (Annexure P-3);

c) to issue a writ in the nature of mandamus thereby giving directions to the respondents to award the benefits thereunder and to promote the petitioner with effect from the date his juniors have been promoted, keeping in view the sequel of the facts mentioned below,

in the interest of justice.”

2. Petitioner was subjected to disciplinary proceedings on the allegations that he had prepared two note sheets in respect of four criminal matters on 22.05.2010 and 28.05.2010 but it was found that petitioner submitted notes dated 22.05.2010 with slight change in the earlier note dated 20.05.2010 in which order had already been passed.

3. Learned counsel for the petitioner submitted that signatures are identical. On the instructions of Superintendent, he was compelled to prepare one more note on 28.05.2010 in respect of same matter where note was prepared on 20.05.2010.

4. Under Article 226 of Constitution of India, Court cannot re-appreciate evidence. No legal ground has been urged so as to interfere with penalty order and consequential orders passed in appeal. Supreme Court in the case of ***Union of India and others vs. P. Gunasekaran***, reported in ***(2015) 2 SCC 610***, has laid down guidelines under what circumstances under Article 226, Court can interfere in respect of disciplinary proceedings. Supreme Court in para nos. 12 and 13 has laid down the following guidelines:-

“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, 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.*

13. 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.”*

Since, petitioner has not made out a case raising any legal ground and with reference to guidelines issued in the case of ***P. Gunasekaran (supra)***, consequently, present petition stands dismissed.

February 01, 2018
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : No