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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-4185-2017 [O&M]

Date of Decision : July 31, 2018

Aninda Sunder Nandi

.... Petitioner.

Versus

Union of India and others.

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present Mr. Baljinder Singh, Advocate
and Mr. Jattrar Kureec, Advocate,
for the petitioner.

Mr. Vipul Aggarwal, Senior Panel Counsel
for respondents No. 1 to 7.

SHEKHER DHAWAN, J.

Present writ petition under Article 226/ 227 of the Constitution of India is for issuance of a writ in the nature of certiorari for quashing impugned order dated 19.7.2016 (Annexure P/5) passed by respondent No. 5 vide which the petitioner has been compulsory retired from service and the order dated 26.12.2016 (Annexure P/7) passed by respondent no. 4 whereby the appeal filed by the petitioner against order Annexure P/5, has been dismissed. Challenge is also to the order dated 14.2.2017 (Annexure P/10) passed by respondent No. 7, vide which directions have been issued to the petitioner to vacate the residential house allotted to him within a period of 15 days.

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2. Petitioner asserted his claim in this writ petition on the grounds : that the petitioner joined Central Reserve Police Force (for short, "**CRPF**") on 4.4.1991 as a Constable. He was allotted one house by the CRPF i.e. Quarter No.17, Type II, Hallomajra, Chandigarh in the year 2011 and since then the petitioner has been residing in the said house alongwith his family. The petitioner suffered disease i.e. Anxiety Neurosis and due to that, he remained under stress and also suffered neurosis attack. Apart from that, the petitioner was also suffering from spinal problem for which he is taking treatment from PGIMER, Chandigarh. Copies of medical opinion dated 23.02.2015 and 22.08.2016 given by PGIMER, Chandigarh are placed on record as Annexures P/1 and P/2 respectively. As per the petitioner, the higher officers of the battalion started thinking that the petitioner was of no use in the CRPF and started harassing him. The harassment caused to the petitioner is evident from the fact that a Tullu Pump was installed in the camp for supplying water to RO and bathrooms of Outdoor Training area. There was no plug and the petitioner used to switch on the said pump by connecting the wires directly. His work and sincerity was appreciated by his superior officers. Thereafter the plug was installed and the petitioner started connecting the tullu pump through that plug. On 29.08.2014, the petitioner was watering the plants in the CRPF area and he found that there was no water in the bathroom as well as in drinking water RO in the outdoor training area where number of children were present for training. The plug was already attached with two other devices. Therefore, in order to ensure the uninterrupted water supply to training area, the petitioner connected the tullu pump directly with the

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wire so that persons present in the training area may not suffer any problem of drinking water and other water supply. The petitioner had taken special care that no one may suffer any injury or harm because of that connection. However, instead of appreciating the work done by the petitioner, the Commandant served a notice to the petitioner and enquiry was conducted. Ultimately, vide order dated 18.02.2015 (Annexure P/3), the Commandant passed order of compulsory retirement of the petitioner. Petitioner preferred an appeal against the said order and the Appellate Authority set-aside the order and passed order imposing punishment of stoppage of two increments of the petitioner. Though, the said order was an erroneous, yet the petitioner accepted the same and never wanted to raise issue any further. The petitioner was reinstated vide order Annexure P/4.

3. Petitioner also took the plea that the respondents were not even happy with that and they just wanted to throw the petitioner out of the CRPF service. To further harass and humiliate the petitioner, another charge sheet was issued to him on three allegations. The petitioner joined the enquiry proceedings, but the enquiry was conducted in most illegal and arbitrary manner. The Enquiry Officer submitted false report on 09.06.2016 and held the petitioner guilty of all the charges leveled against him. He was not given adequate opportunity to defend himself and he was not provided any opportunity to cross-examine the departmental witnesses, rather the Enquiry Officer mentioned in his report that the petitioner refused to cross-examine the witnesses, whereas no such undertaking was ever given by the petitioner. On the basis of enquiry report dated 09.06.2016, impugned

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order dated 19.07.2016 (Annexure P-5) was passed, whereby the petitioner was ordered to be compulsorily retired from service. Apart from the above, it was also ordered that the petitioner would be entitled to only 35% of his pension or Rs.3500/-, whichever is higher. The petitioner again preferred an appeal against the impugned order Annexure P-5, but the Appellate Authority without affording any opportunity of hearing and without considering the grounds raised by the petitioner in his appeal dismissed the same vide impugned order dated 26.12.2016 (Annexure P-7) and the present writ petition is challenge to the orders Annexure P-5 and P-7.

3. At the time of arguments, learned counsel for the petitioner contended that the facts are not disputed that the petitioner was suffering from anxiety neurosis and he was undergoing medical treatment from PGIMER, Chandigarh and the medical reports from PGIMER are on record at Annexure P/1 and P/2. As the petitioner was suffering from attacks of neurosis, even lighter duties were assigned to him, i.e. work of supply of water to the plants. However, harsh punishment to compulsory retirement was awarded on account of alleged petty lapse of connecting tullu pump directly with the wires. Thereafter, on the same charge as well as two more false charges, the petitioner was ordered to face disciplinary proceedings. Reply filed by the petitioner to the notice was not considered and enquiry was ordered. Though, the petitioner with associated in the enquiry proceedings, but he was not given adequate opportunity to represent his case and he was not given any opportunity to cross-examine the witnesses so as to prove his innocence. The Enquiry Officer submitted the enquiry report on 09.06.2016 which is against the facts and the said report was

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given with biased mind. The punishing authority awarded the punishment of compulsory retirement vide impugned order Annexure P/5 and even the Appellate Authority did not consider the case of the petitioner.

4. Learned counsel for the petitioner also contended that the petitioner is residing with his family in a government accommodation provided by the CRPF and he has been ordered to vacate the said government accommodation without issuance of any notice under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, 'the Act') or carrying out any lawful proceedings for the said purpose and the order dated 14.02.2017 (Annexure P10) also deserves to be set aside.

5. Learned counsel representing the respondents contended that as are the allegations against the petitioners, he was indulging in misconduct and mis-behaviour with senior officers. Charges against him are willful violation of the instructions Annexure R/12 and not to connect the pump with the wire, which was in the interest and for the safety of all the members of the disciplined force. The petitioner was to appear before the superior officers of the CRPF and he was asked to switch off his mobile phone but the petitioner refused to do so, or even to keep the same outside the office. It is not the case of the petitioner that he was not given due opportunity to defend his case during the enquiry proceedings, rather he had associated the enquiry proceedings thoroughly and at no stage the petitioner ever made any request to the Enquiry Officer or to any higher authority or the disciplinary authority complaining that he was not being given due opportunity to cross-examine the witnesses so as to prove his

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innocence and the plea taken in the writ petition is just an after-thought. The enquiry proceedings were conducted on the basis of material and record available on the file and the punishing authority passed the order Annexure P/5 considering the matter in its entirety including the enquiry report submitted by the Enquiry Officer. The appellate authority after hearing the petitioner, dismissed his appeal being without any force.

6. As regards to vacation of government accommodation, due notice was issued to the petitioner and order Annexure P/10 was passed. The petitioner had a remedy of appeal under Section 9 of the Act to challenge the order Annexure P/10, but he has not availed the same and on that account also the present writ petition is not maintainable.

7. Having considered the submissions made by learned counsel for the parties and the facts of the case, this Court is of the considered view that there is no dispute on the facts that during the course of employment of the petitioner, he was found negligent in discharge of his duties. For his lapses, a charge sheet was issued to him on 25.09.2014 as he was found to be watering the plants and the plug was installed by connecting the Tullu Pump through that plug, although the management had already instructed otherwise. For the said laps, he was awarded punishment of compulsory retirement vide order dated 18.2.2015 (Annexure P/3) and in appeal, a sympathetic view was taken by the Deputy Inspector General and the punishment was reduced to stoppage of one increment for a period of two years without cumulative effect.

8. Subsequently, he was issued another charge sheet on different account and the allegations were regarding using

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abusive/unparliamentary/foul language with his colleagues and higher officers and other subordinate officials and on the basis of enquiry proceedings, he was ordered to be compulsorily retired from service vide order dated 19.07.2016 (Annexure P/5). The disciplinary proceedings were initiated and in regular enquiry proceedings the petitioner was given due opportunity to defend his case and he was associated in the enquiry proceedings throughout.

9. Learned counsel for the petitioner had raised an argument that the petitioner was not given any opportunity to cross-examine the witnesses during the enquiry proceedings and he was not given any opportunity to defend his case. However, to a query put by the Court as to whether any such fact was brought to the notice of Enquiry Officer during the enquiry proceedings or before the Disciplinary Authority at any stage, learned counsel fairly conceded that there was no such representation/complaint made by the petitioner either to the Enquiry Officer or to the Appointing Authority at any stage during the enquiry proceedings, rather, this plea was taken here only. Had there been any such occasion, the petitioner must have raised such a plea during the enquiry proceedings itself or had represented before the higher authorities but that has not been done and the same is established on the file that due opportunity was given to the petitioner during enquiry proceedings.

10. The scope of interference in such like disciplinary matters by the Courts is to a limited extent especially when the domestic enquiry has been conducted and due opportunity has been given to the delinquent official. Certainly, the Court can look into the points whether the enquiry

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was conducted in fair manner and principles of natural justice were followed, but in the given set of facts, the petitioner has not been able to establish that in fact, he had not been given due opportunity before the Enquiry Officer or that he was not heard during the departmental proceedings and the plea taken by the petitioner is just an after-thought. Courts are not supposed to perform the duties of appellate authority to scan the evidence, but the role of the Courts is limited to the extent that the Court is to see whether domestic enquiry was conducted in a fair manner and due opportunity was given to the delinquent official. Such a view was taken by Hon`ble Supreme Court in **Union of India and others V. P. Gunasekaran**, 2015(2) SCC 610, where the Hon`ble Apex Court observed as under:-

“13. 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

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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.”

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11. In **State of Andhra Pradesh and Ors. v. S. Sree Rama Rao** AIR

1963 SC 1723, the Hon`ble Apex Court observed as under:-

“7. The High Court is not constituted in a proceeding Under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ Under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ Under Article 226 of the Constitution.”

12. Applying the same principles of law to the present set of facts, wherein the petitioner has not been able to establish that he was not

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afforded reasonable opportunity during the departmental proceedings and petitioner having been heard by the authorities, there is no reason to set-aside the impugned order dated 19.7.2016 (Annexure P/5) passed by respondent No. 5 and order dated 26.12.2016 (Annexure P/7) passed by respondent no. 4.

13. Turning to the next controversy involved in this case, whether the petitioner is entitled to obtain stay regarding operation of order dated 14.2.2017 (Annexure P/10) whereby he was ordered to vacate the residential quarter allotted by the CRPF to him, needless to mention that the petitioner having been compulsory retired from service has no right to occupy the government accommodation because other government officials are waiting in a long queue for allotment of accommodation. The present petitioner has absolutely no right to occupy the government accommodation allotted to him in his capacity as a public servant.

14. Resultantly, there is no merit in the present writ petition and the same stands dismissed.

(SHEKHER DHAWAN)
JUDGE

July 31, 2018.
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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes