IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO. 23287 of 2014(O&M)
CWP No. 6858 of 2015 (O&M)
CWP No. 20607 of 2016 and
CWP No. 15212 of 2018 (O&M)
Date of Decision: 03.12.2019

Urvashi Goel

... Petitioner

versus

State of Punjab &Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Argued by : Ms. Alka Chatrath, Advocate with
Mr. Manwatan Pal Singh, Advocate
for petitioner in CWP-15212 of 2018.

Mr. R.S. Kalra, Advocate for
petitioner in CWP-6858 of 2015 &
CWP-20607 of 2016.

Mr. Vijay Pal, Advocate for
petitioner in CWP No. 23287 of 2014.

Mr. P.S. Bajwa, Addl. AG Punjab.

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ARUN MONGA, J

1. Petitioner, being a widow of terrorist victim was given Government job as an Excise and Taxation Officer, on compassionate grounds. She claims to have been victimized by certain lobby in the Excise and Taxation Department so as to harm/ destroy her career systematically. While on the other hand, Department has charged her of using the letter of law, in a way best suited to her and not in the true spirits of the provisions of law.

2. It is stated that while being posted as Assessing Authority, she did not follow proper and requisite methods of assessment while discharging her duties. She adopted a methodology which was diametrically opposed to the true process of law. As Assistant Excise and Taxation Commissioner, Moga she was charged with acts of omission and commission of being negligent, careless and default in performing her duty leading to issuance of charge-sheets from time to time. Petitioner was *inter alia* also charged with committing violation of orders passed in CWP No. 369 of 2008, whereby this Court had remanded the case of one M/s Pankaj Motors, Moga pertaining to financial year 2005-06 for fresh assessment by the Designated Officer.

3. Vide this judgment, four writ petitions bearing CWP Nos. 23287 of 2014, 6858 of 2015, 20607 of 2016 and 15212 of 2018 are being disposed of as common facts and issues are involved therein. Facts are since inter-mixed, before adumbrating the same, it may, therefore, be appropriate to have brief chronology of the career graph of the petitioner vis-à-vis departmental proceedings/ litigation which is as below:-

Date	**Event**
03.10.1994	Petitioner was appointed as Excise and Taxation Officer, on compassionate grounds, pursuant to a decision taken by the Councils of Ministers, State of Punjab.
05.07.2005	Suspended subject to outcome of pending departmental proceedings for causing temporary misappropriation of funds.
03.08.2005	Charge-sheeted for (a) late depositing Rs.2,74,000/- in the government Treasury(b) produced bogus receipts showing deposit of partial amount.
01.09.2005	Charge-sheeted for (a) having unauthorizedly obtained excess demand of Rs.4.75 lacs from M/s Bajaj Engineering (b) she did not deposit excess demand in the Government Treasury.
26.09.2005	Reply qua charges of late deposit of Rs.2,74,000/- filed, which was found unsatisfactory

14.10.2005	Reply qua charges of having unauthorizedly obtained excess demand of Rs.4.75 lacs from M/s Bajaj Engineering filed, which too was found not satisfactory.
25.11.2005	Notwithstanding, reinstatement ordered.
13.04.2006	Enquiry Officer in the matter of M/s Bajaj Engineering appointed.
17.04.2006	Enquiry Officer appointed in the matter of late deposit of Rs.2,74,000/-.
21.11.2006	Enquiry Report indicted her qua the charge of having unauthorizedly obtained excess demand of Rs.4.75 lacs from M/s Bajaj Engineering.
05.02.2007	Other Enquiry report also indicted her of the charge of late deposit of Rs.2,74,000/-.
28.05.2009/ 02.06.2009	Awarded punishment of stoppage of two increments without cumulative effect qua temporary misappropriation of funds of Rs.2,74,000/-. The said punishment attained finality as no appeal was preferred by the petitioner.
27.11.2008/ 03.12.2008	Awarded punishment of stoppage of two annual increments, this time with cumulative effect qua excess demand of Rs.4.75 lacs from M/s Bajaj Engineering.
13.01.2009	Appealed against awarding of punishment in M/s Bajaj matter.
14.07.2009	Appeal was rejected and the punishment order, thus, attained finality.
15.07.2009	Departmental Promotion Committee(DPC) ignored her, in view of checkered service record of petitioner.
23.11.2010	DPC once again ignored her owing to lack of requisite benchmarks and in view of punishments awarded from time to time.
23.06.2011	Suspended again from service pending departmental proceedings.
26.07.2011	DPC, this time considered the candidature of petitioner, but followed the principles of sealed cover due to her continued

	suspension.
19.08.2011	Report from the Government indicted her qua incorrect assessment of M/s Fire and Fabrics for the year 1992-93, 1993-94 and M/s Kamal Singh Narinder Kumar for the year 1993-94.
25.08.2011	Excise and Taxation Commissioner, Punjab sought explanation regarding action taken against petitioner in M/s Pankaj Motors matter.
23.12.2011	Petitioner reinstated into service
21.03.2012	Charge-sheeted again for making improper/ illegal assessment of a firm M/s Pankaj Motors, Moga qua assessment years 2005-06 and 2006-07.
05.06.2012	Reply to the charge-sheet submitted by petitioner which was found unsatisfactory.
25.06.2012	Show cause notice issued seeking explanation qua incorrect assessment of M/s Fire and Fabrics for the year 1992-93, 1993-94 and M/s Kamal Singh Narinder Kumar for the year 1993-94.
06.09.2012	Excise and Taxation Commissioner recommended that petitioner deserves to be proceeded against by way of regular departmental enquiry in the matter of M/s Pankaj Motors.
01.02.2013	Enquiry Officer appointed in the matter of M/s Pankaj Motors.
06.03.2013	Awarded punishment of stoppage of one increment without cumulative effect in the matter of M/s Fire and Fabrics and M/s Kamal Singh Narinder Kumar. Punishment attained finality as no appeal filed.
26.12.2013	Work withdrawn from petitioner by Excise and Taxation Commissioner in *suo motu* exercise of powers.
31.03.2014	Notwithstanding, withdrawal of work, petitioner continued with the work of framing assessments in as many as three cases viz. (1) M/s Ashoka Enterprises, (2) M/s Ashoka Metals and Chemicals and (3) M/s Himalia Chemicals.

06.01.2014	Enquiry Officer submitted his report *inter alia* on the charges of petitioner being negligent and careless in performance of her duties while making assessment qua M/s Pankaj Motors, Moga for the years 2005-06 and 2006-07. While returning his findings, the Enquiry Officer held that since *suo motu* re-assessment had already been ordered qua M/s Pankaj Motors and till its completion financial loss to the government cannot be ascertained. In the aforesaid premise, allegations of causing financial loss by passing incorrect assessment orders were held to be not proved by the Enquiry Officer.
05.02.2014	Another DPC meeting took place and case of petitioner was though considered, but owing to pending departmental proceedings/ charge-sheet, her case was kept in a sealed cover.
22.01.2014	Enquiry report sent to petitioner and to Excise and Taxation Commissioner, for comments
15.03.2014	Comments were sent by Excise and Taxation Commissioner after seeking report of Assistant Excise and Taxation Commissioner and Additional Excise and Taxation Commissioner stating that petitioner made assessment of cases very negligently, in haste and without application of mind.
04.04.2014	Personal hearing was granted to petitioner by Financial Commissioner, Excise and Taxation.
12.09.2014	Notice for compulsory retirement issued to petitioner.
07.10.2014	Petitioner's reply to compulsory retirement notice was found unsatisfactory.
22.10.2014	Competent authority retired the petitioner prematurely.
October, 2014	CWP No. 23287 of 2014 filed by the petitioner to assail her premature retirement.
19.11.2014	Petitioner was issued yet another charge-sheet framing following charges:- *"1. She passed the assessment orders in 3 cases in*

	an unauthorized manner, despite withdrawal of the assessment powers by the Excise and Taxation Commissioner, Punjab vide order dated 26.12.2013. She passed the assessment order of M/s Ashoka Enterprises year 2011-2012 dated 31.03.2014, Assessment order of M/s Ashoka Metal and Chemical, year 2011-12 dated 31.03.2014 and the Assessment order of M/s Himalia Chemical year 2011-12 dated 31.03.2014 in unauthorized manners. *2. She passed the sketchy assessment orders of total 7 cases of different years of the above three firms without completing the investigation which are mentioned in the charge sheet whereas these cases were of high turnover in which there is possibility of more tax."*
04.12.2014	Operation of premature retirement order dated 22.10.2014 was stayed by this Court during pendency of proceedings of CWP No. 23287 of 2014.
10.04.2015	CWP No. 6858 of 2015 was filed by petitioner impugning the charge-sheet dated 19.11.2014 which was directed to be heard with earlier writ petition bearing CWP No. 23287 of 2014.
04.05.2015	Enquiry Officer was appointed to probe charge-sheet dated 19.11.2014.
22.01.2016	Enquiry Report indicted her of both the charges per charge-sheet dated 19.11.2014.
	Regarding first charge a finding was returned that she committed negligence in seven cases under enquiry and violated different provisions of Punjab Value Added Tax, 2005(PVAT) and the Rules framed thereunder. She was also indicted of non-compliance of 25 cautions as displayed on the departmental portal/ website, which were required to be complied with by the Designated Officer at the time of passing assessment order.

	As regards the second charge, the Enquiry Officer concluded that the same too stood amply proved. He returned a finding that the petitioner had passed sketchy assessment order, whereas, keeping in view the high turn-over of the firm, it was all the more imperative that 25 cautions, as prescribed on the web portal, ought to have been complied with.
10.02.2016	Enquiry report indicting petitioner was provided to her and she submitted her representation/ objections to the same.
22.04.2016	Personal hearing was granted to petitioner.
06.05.2016	Meanwhile, the Administrative Secretary(Additional Chief Secretary, Excise and Taxation) considered earlier enquiry report dated 06.01.2014qua M/s Pankaj Motors, wherein petitioner was exonerated, but disagreed with the findings therein and recorded detailed reasons and gave his dissenting note. Administrative Secretary opined that after examination of the record of case, charges leveled against petitioner, report of Enquiry Officer and comments on enquiry report received from Excise and Taxation Commissioner, it was found that assessment made by the Officer was not correct. The same was done in a negligent manner and hastily without applying mind and without complying with prevalent practice and without proper examination/ verification. Resultantly, the assessee was helped in committing tax evasion and loss to the revenue.
06.05.2016	PPSC approval sought to award punishment to petitioner.
24.05.2016	Approval was granted by PPSC to dismiss the petitioner
17.06.2016	Dismissed from service.
07.11.2016	Aggrieved, petitioner filed CWP No. 20607 of 2016 challenging her dismissal order dated 17.06.2016, which too was directed to be heard with earlier two writ petitions bearing CWP No. 23287 of 2014 and 6858 of 2015.

17.01.2017 **07.02.207** **13.02.2017** **28.02.2017**	Petitioner was called for opportunity of personal hearing on enquiry report dated 22.01.2016 indicting her in charge-sheet dated 19.11.2014, but she did not turn up.
10.07.2017	Relevant record sent to PPSC seeking approval to dismiss petitioner.
06.02.2018	Approval to dismiss granted by PPSC.
28.02.2018	Dismissed again from service *inter alia* for illegally favouring M/s Pankaj Motors. It was directed that dismissal order passed earlier shall run concurrently.
2018	CWP No. 15212 of 2018 to challenge fresh dismissal order dated 28.02.2018

4. As regards the service record of the petitioner, the same is also summed up in tabulated form as below:-

S.No.	**Year**	**Grading**	**Remarks**
1	1999-00	Average	ETC wrote, "Created a demand of Rs.344253/- which is low. No inspection. Penalty imposed is also low."
2	2000-01	Average	AETC wrote, "She had no specific achievement during the year."
3	2001-02	No Report Certificate	
4	2002-02	No Report Certificate	
5	2004-05	Below Average	AETC remarked that her integrity is doubtful. Wrote, "Indulged in temporary embezzlement of funds during her tenure in Ludhiana, for which disciplinary action is underway."
6	2012-13	No Report Certificate.	

5. Now adverting to the facts, which for facility of convenience, are taken from last of the four writ petitions and the return filed thereto i.e. CWP No. 15212 of 2018.

6. It may be pertinent to start with punishment order dated 27.11.2008(Annexure R-6), whereby petitioner was awarded punishment of stoppage of two increments with cumulative effect. The same reads as under:-

> *"It was informed by ETC, Punjab vide its memo No. G-2-05/4251, Dated 29.06.2005 that when Smt. Urvashi Goel was posted as Excise and Taxation Officer in Ludhiana-2, she had temporarily embezzled Rs.4.75 lac(Only four lac, Seventy Five Thousand rupees), due to which she was charge-sheeted vide Rule 8 of Punjab Civil Services(Punishment and Appeal) Rules, 1970 vide Memo No. 2/47/05-ET.1(2)/7685 dated 1.9.2005 of the department and was instructed to give her reply within 21 days, and simultaneously it was written to the Vigilance Department vide letter No. EDP No. 2/47/2005-ET-1(2)/ 6861 dated 26.07.2005 to get this case inquired by the Vigilance Department. The Vigilance Department sent its report through its letter number EDP NO. 9/16/2005-3-C-3/1526 dated 27.01.2006 through which it intimated that the issue has been closed, though it has recommended Departmental action. This officer sent her reply to the chargesheet vide her letter No. 14-10-2005, through which she refused to accept the charges leveled against her. Therefore, to know the veracity of the charges leveled against her, Sh. G.S. Agarwal, IAS(Retired) was appointed as the Inquiry Officer vide letter No.2/47/05-ET1(2)-2218-2221 dated 13.04.2006 of the department.*
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> *2. Sh GS Agarwal IAS(Retired), Inquiry Officer sent his Inquiry Report through his letter dated 6.11.2006, in which he proved the charges leveled against this officer. As per the rules/ instructions, before taking some next action on this case this officer was instructed to send her reply within one month, after sending her the copy of the Inquiry Report vide government memo No.2/47/05-ET1(2)-8018 dated 21.11.2006 of the department.*
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> *3. This officer sent her reply to the Inquiry report vide her letter dated 12.12.2006, in which she refuted the charges proved*

against her in the inquiry report, and also claimed that no financial loss has occurred to the government in this case, as all the amounts stand deposited. Therefore, the chargesheet issued to her be filed.

4. After discussing all the facts of this case at the level of the government, it was found that this Excise and Taxation Officer Smt. Urvashi Goel, deposited the government amounts only after this issue came to the notice of the higher authorities, due to which two increments of this officer are, with cumulative effect, are decided to be stopped. But a she is a class one officer, and as per rules/ instructions, before stopping two increments of with cumulative effect, the approval of Punjab Public Service Commission was required. Therefore, a letter was written to Punjab Public Service Commission, Patiala under department's letter No. 2/47/2005-ET 1(2)/2151 dated 22.7.2008 for its approval to stop two increments of with cumulative effect of this officer. In its letter No. Dis 457/2008/A-7/3185 dated 21.10.2008, the Punjab Public Service Commission, Patiala approved to stop two increments of with cumulative effect. Therefore, the two increments of with cumulative effect of Smt. Urvashi Goel, Excise and Taxation Officer, are being stopped."

7. Barely the ink had dried up from the above punishment order, when the petitioner was awarded another punishment of stoppage of two more increments and this time without cumulative effect vide punishment order dated 28.05.2009(Annexure R-3) which reads as below:-

"1. Urvashi Goel, Excise and Taxation Officer, when you were posted as Excise and Taxation Officer in Ludhiana-2, you had deposited the amounts, collected as penalties of 13(3) and 14(B) under ST 29 to the tune of Rs.2,74,400, late. These amounts were deposited when it came to the notice of Assistant Excise and Taxation Commissioner, Ludhiana-2, that you have not deposited these amounts in the Government Treasury and a clarification was sought from you by District Authority vide letter No. 2201/SO

dated 18.10.2004 regarding non-deposit of these amounts. This shows that you had not deposited these amounts deliberately. Hence, you had shown irresponsibility and have grossly violated the rules.

2. That you were issued a ST 29 Receipt No. 8669 dated 11.08.2003 and you had collected total amount of Rs.187400/- as penalties, by issuing receipts from 1 to 71 under sections 13(3) and 14(B), but were not deposited in the Treasury. These amounts were deposited when your clarification was sought by the District Authority on 18.10.2004. The details of these amounts are as follows:-

Receipt No.	Dated	Amount	Date of deposit in Treasury
10	18.8.03	35000	5.11.04
17	8.9.03	5000	3.11.04
18	16.9.03	25000	3.11.03
19	20.9.03	6000	2.11.04
20	20.09.03	8000	2.11.04
21	20.9.03	6000	2.11.04
22	23.9.03	1500	2.11.04
23	23.9.03	1500	2.11.04
24	23.9.03	5000	2.11.04
26	30.9.03	7000	4.11.04
27	4.10.03	2000	4.11.04
28	8.10.03	1000	4.11.04
29	8.10.03	3000	4.11.04
30	8.10.03	2000	4.11.04
31	11.10.03	1500	4.11.04
32	11.10.03	2000	4.11.04
33	11.10.03	1500	4.11.04
34	19.10.03	1500	4.11.04
35	19.10.03	2000	4.11.04
36	19.10.03	1000	4.11.04
38	17.10.03	1000	4.11.04
39	17.10.03	1000	4.11.04

40	17.10.03	2000	4.11.04
41	17.10.03	2500	4.11.04
42	28.10.03	7000	4.11.04
43	29.10.03	15000	4.11.04
44	4.11.03	21000	4.11.04
45	9.11.03	8000	4.11.04
46	10.11.03	1000	4.11.04
47	10.11.03	6000	4.11.04
48	15.11.03	3400	4.11.04
49	10.03.04	3000	4.11.04

3. Moreover, from a receipt book No. 6102 which was issued to Sh. Ram Gopal, Tax Inspector, you have collected an amount of Rs.11000/- as penalty by issuing receipts No. 63 to 67 under your own signatures, in 12/02 but was deposited in Treasury on 05.11.2004.

4. Moreover, during the investigation, you have presented the bogus challan deposit receipts against the following receipts from Receipt book No. 8669 and after your clarification was sought by the District Authority, you presented the original deposit receipts after depositing these amounts, which shows that the receipts presented earlier were bogus, the details of which are as follows:-

Receipt No.	Dated	Amount	Date on bogus deposit receipt	Date on original deposit receipt
50	23.05.04	1000	4.10.04	4.11.04
51	25.05.04	1000	4.10.04	4.11.04
52	26.07.04	6500	27.07.04	4.11.04
53	26.07.04	7000	27.07.04	4.11.04
54	26.07.04	1000	27.07.04	4.11.04
55	03.08.04	1500	16.08.04	4.11.04
57	07.08.04	4000	16.08.04	4.11.04
58	12.08.04	5000	16.08.04	4.11.04
59	12.08.04	7000	16.08.04	4.11.04
60	13.08.04	1000	16.08.04	4.11.04
56	04.08.04	1000	3.08.04	6.11.04

61	06.09.04	3000	4.10.04	4.11.04
62	06.09.04	2000	4.10.04	4.11.04
63	06.09.04	8000	4.10.04	4.11.04
64	06.09.04	4000	4.10.04	4.11.04
65	29.09.04	1000	4.10.04	4.11.04
66	29.09.04	500	4.10.04	4.11.04
67	29.09.04	500	4.10.04	4.11.04
68	29.09.04	2000	4.10.04	4.11.04
69	29.09.04	1000	4.10.04	4.11.04
70	29.09.04	2500	4.10.04	4.11.04
71	29.09.04	3000	4.10.04	4.11.04

5. From the above details it is clear that you have kept the amounts collected as penalties with yourself, and when it came to the notice of the higher authorities about these amounts being not deposited in the Treasury, you deposited these amounts immediately in the Treasury, which shown your ill-will. As per the Punjab Financial Rules, the amounts of penalties collected are to be deposited in the Treasury on the same day or on next day morning, in the Treasury, but you deposited these amounts after around one year. If this embezzlement on your part would not have come to the notice of the higher authorities, there would have been a financial loss of Rs.2,74,000/- to the government. By doing so, you have blatantly violated the government instructions and rules, and this makes you eligible for charges under Rule 8 of Punjab Civil Services(Punishment and Appeal Rules, 1970)

2(?). The reply to this abovementioned chargesheet was given by this officer under her letter dated 26.09.2005, in which she refused to accept the charges leveled against her. Therefore the reply of this officer was sent to Excise and Taxation Commissioner, Punjab via memo No.2/108/2004-ET-1(2) 8766 dated 13.10.2005 of the government, asking him to give his comment. The Excise and Taxation Commissioner, Punjab sent his comment vide memo No.G-2-06/529 dated 30.1.2006, in which he held that this officer has temporarily embezzled the government *money, due to which there should be regular investigation of the charges leveled against her.*

3. After perusing the report/ comment of Excise and Taxation Commissioner, Punjab at the level of the government, a decision was taken to look into the charges leveled against this officer at the level of the government and Sh. MM Oberoi, IAS(Retired) was appointed the Inquiry Officer vide letter No.2/1098/2004-ET-1(2)/2262 dated 17.04.2006.

4. Sh. M.M. Oberoi, IAS(Retired), Inquiry Officer sent his Inquiry Report vide his memo No. MMO/IO/2007 dated 5.2.2007 in which he proved the charges leveled against this officer.

5. As per the rules/ instructions, before taking some next action on this case, this officer was instructed to send her reply within one month, after sending her the copy of the Inquiry Report vide government memo No.2/208/2004-ET-1(2)/1178 dated 19.2.2007.

6. The inquiry of presenting bogus receipts worth Rs.76000/- out of Rs.274000/- deposited late, was got done from the Vigilance Department and in its report vide OVL No. 9/16/2005/3C3/1526 dated 27.1.2006, intimated that the Vigilance Department has closed the issue as this officer has already deposited all the amounts.

7. This officer sent her reply to the Inquiry report vide her letter dated 12.03.2007, in which she claimed that all the amounts are deposited in the Treasury and even Vigilance has closed this inquiry in its department. So, the departmental inquiry against her be closed but before taking any decision in this matter, she be given a chance for personal hearing.

8. Honorable Financial Commissioner gave opportunity to this officer on 23.04.2009 for personal hearing. During the personal hearing, this officer could not give any satisfactory reply regarding the last deposit of Rs.274000/- and only said that she kept on giving these amounts to the inspector for depositing it but she never asked him whether the amounts have got deposited or not. This shown that this officer has deliberately deposited the amounts late in Treasury and made temporary embezzlement of *the government money. If this issue would not have come to the notice of the government, this officer would never have deposited these. Hence, there is no weight in the justifications given by the officer.*

9. After discussing all the facts of this case at the level of the government, it was found that this Excise and Taxation Officer Smt. Urvashi Goel, deposited the government amounts only after this issue came to the notice of the Assistant Excise and Taxation Commissioner, Ludhiana-2. Hence, this officer has shown negligence in her duty and made loss to the government revenue. Therefore, 2 increments of this officer are, without cumulative effect, being stopped."

8. Having perused the above two punishment orders, one may wonder whether the petitioner was let off leniently by the punishing authority. Seems to be so. Particularly, in view of the fact that petitioner chose to accept the punishments. She did not take any recourse to litigation in any court of law. And rightly so. Be that as it may, the said punishment orders have since attained finality and in any case, the same are apparently not the immediate reasons of the petitioner being compulsorily retired/ dismissed from service. This Court would refrain from judging the legality thereof. However, the past track service record of petitioner is reflective of the mindset in which the competent authority was placed while coming to the conclusion that petitioner is unfit to be retained in service.

9. Adverting now to the writ-wise claim of the petitioner in the same order as the same were instituted before this Court.

10. I have heard the rival contentions of Ms. Alka Chatrath, Advocate Mr. R.K. Kalra, Advocate and Mr. Vijay Pal, Advocate for the petitioner in different writ petitions and Mr. P.S. Bajwa, Additional Advocate General

Punjab and with their able assistance perused the pleadings along with relevant record appended thereto.

CWP-23287 OF 2014

11. Challenge herein is to an order dated 22/27.10.2014(Annexure P-20)for compulsory retirement of the petitioner.

12. On the basis of recommendations made by a Committee headed by Financial Commissioner(Taxation),compulsory retirement notice was issued, wherein it was proposed to retire the petitioner compulsorily under Rule 3 of the Punjab Civil Services(Premature Retirement) Rules, 1975(for brevity, 1975 Rules). Therein, past conduct of the petitioner qua issuance of charge-sheets/ departmental proceedings, apart from the adverse remarks recorded in the Annual Confidential Reports, particularly for the year 2004-05 about temporary embezzlement of funds, was taken note of. Petitioner's reply dated 07.10.2014 did not find favor with the competent authority and resultantly, order dated 22.10.2014 retiring her compulsorily was passed.

13. A perusal of the impugned order would reveal that said Committee verified the record of 190 officials on completion of 15, 20, 25, 30 and 35 years of their service, wherein the service record of the petitioner was found unsatisfactory for the following reasons:-

> *"A. Officials were issued a charge-sheet for late deposit of money of fine under ST 29 under 13(3) and 14(B). In this regard vide Government letter No. 2/108/2004-ET1(2)/2868 dated 2.6.2009 your two annual increments were stopped with cumulative effect.*
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> *B. Officials unauthorisedly obtained excess demand of Rs.4,75,000/- from firm M/s Bajaj Engineering(India) and did not deposit it in the government treasury. Vide government letter No. 2/4/2005-ETI(2)/4050 dt. 3.12.2009 your two annual increments were stopped without cumulative effect.*

C. Officials allowed excess RD claim as Assessing Officer to M/s Fiber(?) and Fabric on lower value of ST 22 form with respect to para No.2.3 of CAG report year 2001-02 and did not do correct assessment. Vide government letter No. 2/54/2011-ET1(2)/4060-61 dated 7.03.2013 your one annual increment was stopped without cumulative effect.

D. For not doing the correct assessment of M/s Pankaj Motors Moga, you were issued charge-sheet vide letter dated 21.03.2013 and regular enquiry was conducted in this case. Case is still pending.

E. Official annual confidential report of years from 1995-96 to 2012-13, the reports of the years 1999-2000 and 2004-05 are average and with respect to the annual confidential report for the year 2004-05, the following adverse remarks have been recorded/ conveyed:

> *"I entirely agree with the general remarks and overall grading made by the AETC, Ldh-II. There is nothing worthwhile to write about the officer except her misdeeds. The officer has indulged in temporary embezzlement of funds during her tenure in Ludhiana, for which disciplinary action is underway. I rate her below average.*
>
> *While considering the request given by the officials, the adverse remarks have not been expunged. You have been informed in this regard."*

14. Reply filed by the petitioner to the notice of compulsory retirement was since found unsatisfactory, prior approval of the PPSC was sought and the same was accorded vide letter dated 25.08.2014.

15. While issuing notice of motion, my Senior Brother Rajiv Narain Raina, J, who was then in seizin of the matter, passed following order dated 04.12.2014:-

"Record perused with the assistance of counsel.
Notice of motion, returnable by 30.3.2015.

Mr. Anshul Gupta, Assistant Advocate General, Punjab accepts notice on behalf of the respondents and waives service on them. Mr .Rajiv Agnihitori to supply 6 sets of the paper book to Mr. Gupta during the course of the day. Reply, if any, be filed within 7 days in advance of the date fixed with copy to the opposite counsel.

Heard learned senior counsel and Mr. Gupta for the State at some length on stay matter.

Both the learned counsel have prepared charts of service record/ACRs of the petitioner in their challenge to and in defence of the order of compulsory retirement impugned in this petition.

Having regard to the fact that below average grading given to the petitioner for the year 2004-05 was based upon the charge of late deposit of fine collected as Excise and Taxation Officer and the charge sheet issued on 3.8.2005 resulted in an enquiry and ultimately, only a minor punishment of stoppage of 2 increments without cumulative effect was imposed on the petitioner vide order dated 28.5.2009 which has become final. Then it appears that cause of suspicion with respect to integrity arose out of the above charge which has led to minor punishment. It is the say of Mr. Agnihotri, learned senior counsel that this not only dilutes but considerably waters down suspicion of integrity doubtful sufficient not to make it serious enough ground or one of the grounds for compulsory retirement.

There was another charge sheet dated 1.9.2005 against the petitioner again for alleged late deposit of taxes collected from the assessee which led to infliction of major punishment vide order dated 27.11.2008 whereby two increments were stopped with cumulative effect. An examination of the service record produced before the Court shows that for the period from 2005 to 2014, the Reporting Officer has graded the petitioner one stage higher than what the reviewing and accepting authority have done. Even then the ACRs for the period of last 10 years are either good or very good. There is another show cause notice dated 25.6.2012 issued to the petitioner which has led to imposition of minor punishment of withholding of one increment without cumulative effect and the *order has become final. The punishment order was passed on 7.3.2013.*

After retiring the petitioner compulsorily, she has been issued another charge sheet according to Mr. Gupta. The contemplated action is stated to have been done on 19.11.2014. Mr. Agnihotri submits on instructions from his client who is present in Court that she has not been communicated this charge sheet as yet.

Mr. Agnihotri further points out that the order of compulsory retirement relieves her forthwith without paying 3 months salary simultaneously with the order of compulsory retirement and for this technical reason as well, the order deserves inter alia to be nullified.

Meanwhile, impugned order (P-20, page 160) shall remain stayed till the next date of hearing. Record is returned."

16. Net result. The petitioner continued to be in service and an employee of the Department as her compulsory retirement was stayed and the interim stay order *ibid* granted by this Court continues to subsist till date.

17. Compulsory retirement of the petitioner was ordered under Rule 3 of 1975 Rules. It would be apposite to reproduce the same for ready reference:-

*3. **Premature Retirement**. - (1)(a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.*

(b) The period of such notice shall not be less than three months :

Provided that where at least three months' notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of his pay and allowances, at the same rates at which he was drawing them immediately before the date of retirement, for a period of three *months or, as the case may be, for the period by which such notice falls short of three months.*

(2) Any Government employee may, after giving at least three months' previous notice in writing to the appropriate authority retire from service on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no employee under suspension shall retire from service except with the specific approval of the appropriate authority.

(3) (a) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than three months in writing to the appropriate authority, retire from service.

(b) The notice of voluntary retirement given under this sub-rule shall require acceptance by the appropriate authority.

(c) Where the appropriate authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(4) The employee, who has elected to retire under sub-rule (2) or sub-rule(3) and has given the necessary notice to that effect to the appropriate authority, shall be precluded from withdrawing his notice except with the specific approval of the appropriate authority :

Provided that the request for withdrawal shall be made before the intended date of his retirement.

Note 1 – An employee may make a request, in writing to the appropriate authority to accept notice of less than three months giving reasons there for and such a request for curtailment will not cause any administrative inconvenience it may relax the requirement of notice of three months condition that the employee shall not apply for commutation of a part of his pension before the expiry of the notice period of three months (Substituted by Punjab

Civil Services(Premature Retirement) (First Amendment) Rules, 1985, published in Punjab Gazette (Extra), dated 14.9.1985 at page 289).

Note 2 - If an employee retires under sub-rule (2) or (3) above while he is on leave not due, without returning to duty, the retirement shall take effect from the date of commencement of the leave not due and the leave salary paid in respect of such leave shall be recovered as provided in rule 8,119 (d) of the Punjab Civil Services Rules, Volume I, Part I.

Note 3 - In completing the notice period of three months referred to in rule, the date of service of the notice and the date of its expiry shall be excluded."

18. The aforesaid rule clearly mandates that an employee can be compulsorily retired in public interest on a date on which he/ she completes 25 years of qualifying service or attains 50 years of age or any date thereafter to be specified in the notice for retirement and the period of such notice shall not be less than 3 months. The petitioner herein has neither completed 25 years nor was she above 50 years on the date of issuing of notice, though would have turned so on effective date of retirement. She was not given the envisaged 3 months' notice. Instead, the impugned order clearly states that petitioner was given 15 days notice.

19. That apart, compulsory retirement is also one of the major punishments provided under Rule 5 of the Punjab Civil Services (Punishment &Appeal) Rules, 1970 which reads as below:-

*"**MAJOR PENALTIES- (v)** [Withholding of increments of pay with cumulative effect or reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of pay]*

(vi) reduction to lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government employee to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government employee was reduced and his seniority and pay on such restoration to that grade, post or service;

(vii) Compulsory retirement;

(viii) Removal from service which shall not be a disqualification for future employment under the Government.

(ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government."

20. Notably, the impugned order for compulsory retirement has to be read bearing in mind that the same essentially is based on the previous major penalties imposed on the petitioner during her service i.e. stoppage of increments. Of course, reliance has also been placed therein on the adverse remarks in her annual confidential report pertaining to the year 2004-05. As far as reliance on the previous punishment of stoppage of increments, while imposing these penalties it was well within the discretion of the competent authority to award alternative major penalty other than the stoppage of increments as provided under 1970 Rules. Having chosen not to do so, to award another major penalty on the basis of earlier major penalty i.e. compulsory retirement, to that limited extent, amounts to double jeopardy.

21. Qua reliance on the annual confidential reports for the year 2004-05, as noted in the impugned order itself, the departmental proceedings about the same remained yet to be finalized/ concluded at that stage. The petitioner had been issued a charge-sheet and enquiry report was still awaited. As it turned out, the enquiry report was furnished in favour of the

petitioner and, therefore, the impugned order relying on the said ACR seems to have been passed in a certain undue alacrity. It would have been another matter if dissenting note had been recorded qua the enquiry report prior to passing of order of compulsory retirement. But that is not the case herein.

22. As regards the enquiry report exonerating the petitioner, it seems that learned counsel for petitioner excessively relied on the same, over-looking the detailed dissenting note recorded by competent authority, Excise and Taxation Commissioner for disagreeing with the findings of the enquiry report and further acceptance of said dissenting note by the superior authority. Having perused the dissenting note, I am in complete agreement with the reasoning contained therein. However, that would still not justify the other irregularities as noted above, while passing order of compulsory retirement.

23. As an upshot of the discussion above, what transpires is that order of compulsory retirement is vitiated by illegality on account of violation of Rule 3(1)(b) of the 1975 *ibid* as the period of notice given was only 15 days. Neither three months' mandatory notice was given to the petitioner nor was she tendered the amount of her pay and allowances before the date of retirement for the period by which the notice fell short of three months as mandated therein. That apart, the order seems to have been essentially passed on the basis of earlier punishment orders which had attained finality. Forming the same very punishment orders as the basis of another punishment of compulsory retirement amounts to double *jeopardy.*

24. Another facet which is noteworthy is that impugned order for compulsory retirement is punitive and stigmatic in nature and effect. 1975 Rules of premature retirement have been wrongly invoked to pass the said punitive and stigmatic order. Since compulsory retirement order herein is

stigmatic awarded as punishment, the same, therefore, had necessarily to be as per procedure mandated in the Punishment & Appeal Rules of 1970. But that was not done. The purported invocation of the provisions of Rule 3 of 1975 Rules is thus a case of colorable exercise of power. The same is not sustainable in law.

25. I am, therefore unable to accept the contention of the learned State counsel that the petitioner was rightly retired. The situation would remain the same even if as per the instructions dated 28.02.2012(Annexure R-7) cases of premature retirement can be considered on the completion of 15 years of qualifying service. For the foregoing reasons, I hold that compulsory retirement order was passed in contravention of the provision under Rule 3 of 1975.

26. In the premise, impugned order/ notice dated 22/27.10.2014(Annexure P-20) for compulsory retirement of the petitioner is set aside with all necessary consequences. The writ petition is allowed in above terms.

CWP-6858 of 2015

27. Challenge herein is to the charge-sheet dated 19.11.2014 issued under Rule 8 of 1970 Rules essentially on the ground that the petitioner had since already been compulsorily retired vide prior order dated 22.10.2014 and having, therefore, ceased to be an officer, could not have been proceeded against after her retirement.

28. Writ petition, at this stage, has been rendered infructuous. Even otherwise the impugned charge sheet does not call for any interference on merits. The petitioner having herself chosen to challenge the compulsory retirement order, operation of which was stayed by this Court, necessarily, therefore, continued to be an officer without any break in her service.

Needless to say that once the operation of the punishment order of compulsory retirement was stayed, the same would be construed as if the punishment order was non-existent because of the stay order during pendency of writ petition before this Court. Be that as it may, the impugned charge-sheet was duly responded by way of filing detailed objections/ reply by the petitioner and upon consideration thereof, further departmental proceedings took place. The same have already culminated into an order dated 17.06.2016 whereby punishment of dismissal was awarded to the petitioner and that is under challenge by way of separate writ petition.

29. In the given situation, when the said charge-sheet has subsumed into punishment order, at this stage no interference therewith is called for. On that short ground alone, the writ petition is dismissed.

CWP-20607 of 2016 & 15212 of 2018

30. Challenge in these two petitions is to two separate dismissal orders dated 17.06.2016 and 28.02.2018 respectively. Since the relief sought herein is common for issuance of a writ of *certiorari* to quash the dismissal orders and, therefore, these are being taken up together.

31. Now adumbrating the charge-sheet dated 21.03.2012(Annexure P-1), which culminated into the passing of the impugned dismissal order dated 17.06.2016 and *inter alia* is the genesis of the *lis* herein. It reads as below:-

> *"1. Smt. Urvashi Goel, Excise and Taxation Officer, being Excise and Taxation Officer during her posting in the office of Assistant Excise and Taxation Commissioner, Moga has committed negligence, carelessness and default in performing his duty.*
>
> *2. That a complaint was received against M/s Pankaj Motors, Moga regarding committing theft. The inquiry of which was conducted by Shri Mansavi Kumar, IAS, Additional Excise and Taxation Commissioner-1, Punjab. During the investigation*

of this complaint the fact came to surface that in the assessment of this firm for the year 2005-06 and 2006-07 which was made by Shri H.L. Chadha the then Assistant Excise and Taxation Commissioner, Moga, now retired, serial wise a demand was calculated to the tune of Rs.12,84,97,879/- and Rs.4,82,56,400/-. Against these Assessment Orders the firm filed an appeal before the Deputy Excise and Taxation Commissioner (Appeal) Ferozepur but the Deputy Excise and Taxation Commissioner dismissed this appeal because the firm had not deposited the required 25% fine/ tax under Section 62(5) of the Punjab VAT Act. Against orders of the Deputy Excise and Taxation Commissioner(Appeal) the firm filed an appeal in the VAT Tribunal but the VAT Tribunal treating the order of the Deputy Excise and Taxation Commissioner(Appeal) kept in uphold. After that the firm filed a Civil Writ Petition No. 369 of 2008 in the Hon'ble Punjab and Haryana High Court. The Hon'ble High Court passed the order as under in this Writ Petition.

> *"We are of the view that in the facts of the case, particularly report of the Designated Officer dated 02.01.2007 without expressing any opinion on the merits it will be in the interest of justice that the assessee gets an opportunity to put forward its case on merits, which may be taken into by the assessing authority.*
>
> *Accordingly, we set aside the assessment order, as affirmed by the appellate authority and remand the matter to the Designated Officer for passing a fresh order in accordance with law after giving an opportunity of hearing to the assessee. The assessee shall appear before the designated officer for further proceedings on 06.02.2009, The assessee will not be entitled to more than two adjournments.*

On this Writ Petition, it was clearly written that the respondents of this writ were(1) Assistant Excise and Taxation Commissioner-cum-Designated Officer, District Moga, Punjab and (2) Excise and Taxation Officer, Moga, Punjab and the Hon'ble Court *passed the order for re-assessment of this case to Assistant Excise and Taxation Commissioner-cum-Designated Officer, District Moga.*

3. Smt. Urvashi Goel, Excise and Taxation Officer was not entitled to grant exemption from VAT against the proceedings of assessment conducted by her Senior Officer i.e. H.L. Chadha, Ex-Excise and Taxation Commissioner, Moga, but he did not brought this fact in the knowledge of Assistant Excise and Taxation Commissioner, Smt. Urvashi Goel, Excise and Taxation Officer started the proceedings for the assessment of this firm for the year 2005-06 and 2006-07. Smt. Urvashi Goel, Excise and Taxation Officer has not only conducted the assessment only for the year 2005-06, 2006-07 rather she also conducted the assessment for the year 2007-08 and 2008-09 also. In the assessment for the year 2005-06 and 2006-07 the demand taken by Shri H.L. Chada, Assistant Excise and Taxation Commissioner(Retired), without seeing the merits of the case, reduced it badly. Smt. Urvashi Goel, Excise and Taxation Officer had no jurisdiction for the re-assessment of this case. She has tarnished the image of the Department. Shri H.L. Chadha, Assistant Excise and Taxation Commissioner(Retired) raised the following 4 objections in his Assessment Orders:-

9. Firstly, the interstate purchases of motor vehicles and spare parts for Rs.31,40,29,612/- but as per the information Collection Centre record, firm's interstate purchase was of Rs.43,79,51,262/-. Thus, there was an unexplained difference of Rs.12,39,21,650/-.

10. Secondly, the firm's output tax did not match with the gross sales which suggests that firm had claimed confessional rate of tax on sales amounting to Rs.26,09,22,646/- to CSD.

11. Thirdly, the firm had claimed ITC amounting to Rs.1,02,65,490/- in respect of intra State Purchase for which no details had been furnished and lastly.

12. The firm had failed to submit complete return as annexure in VAT 18, 19, 23 & 24 had not been annexed to the returns filed by firm."

But Smt. Urvashi Goel, Excise and Taxation Officer has not perused/ conducted verification about any objection of them and ignored them without any logic. On coming this malpractice to surface, a detailed inquiry was required to be conducted but neither any inquiry was got conducted in this regards and nor the opinion or instructions of the experts were obtained in the Head Office. In the assessment of this case, without seeing the seriousness, extending the illegal benefits to the dealer, a loss has been caused to the Government Revenue.

Smt. Urvashi Goel, Excise and Taxation Officer has committed carelessness, default and negligence and have made herself liable to be punished for the charges under rule 8 of the Punjab Civil Services(Punishment and Appeal) Rules, 1970." ====

32. Reply/ objections dated 05.06.2012 submitted by the petitioner to the charge-sheet did not find favour with the competent authority and an Enquiry Officer was appointed to enquire into the charges levelled against the petitioner.

33. An enquiry report dated 06.01.2014 was furnished by the Enquiry Officer, who returned the finding on the charges as not proved.

34. Notwithstanding exoneration of the petitioner vide above enquiry report, respondent No.1/Excise and Taxation Commissioner gave a detailed dissenting note dated 06.05.2016. Petitioner submitted her objections dated 21.01.2018 to the dissenting note. However, after considering the petitioner's objections, the competent authority sustained the reasoning contained in the dissenting note *ibid* and passed an order dated 21.02.2018(Annexure P-20) vide which the petitioner was awarded punishment of dismissal from service.

35. The foremost argument addressed on behalf of the petitioner by Ms. Alka Chatrath, Advocate is that impugned order dated 17.06.2016 is not

sustainable being non-speaking. She referred to and relied on the following citations:-

1. **Balbir Singh Arora Vs. Managing Director, FCI 2005(4) SCT 74.**
2. **P.K. Khanna Vs. National Fertilizer 2005(2) SCT 642**
3. **Rajkishore Jha Vs. State of Bihar 2003(11) SCC 519**
4. **Rampal Vs. State of Haryana (SC) 2009(3) SCC 258**
5. **Amrik Singh Vs. State of Punjab 2014(3) SCT 405**
6. **Smt. Santosh Saini Vs. State of Haryana 2015(2) RSJ 100**
7. **Nafe Singh Vs. Haryana Land Reclamation & Development Corporation, 2016(1) SCT 2012 and**
8. **Jasbir Singh Vs. PSPCL, 2018(3) SCT 119.**

36. Next argument canvassed on behalf of the petitioner is that there has been violation of Punjab Civil Services (Punishment and Appeal) Rules, 1970(for brevity, 1970 Rules), in as much as prior approval of the Punjab Public Service Commission (PPSC) in terms of Rule 9(4) has not been taken. It is stated that though a mere formality of consulting the PPSC was carried out but record of enquiry proceedings was not forwarded by the punishing authority. Thus, the consultation/ advice of PPSC was done/ taken in a hush hush manner. The dismissal order is, thus, violative of principles of natural justice as proper opportunity of hearing was not granted to the petitioner and the approval of PPSC for the same was not conveyed to the petitioner prior thereto. In support thereof, learned counsel for the petitioner relied on **G.S. Sidhu Vs. State of Punjab, CWP No. 21052 of 2017,** decided on 21.09.208**, State of Punjab Vs. G.S. Sidhu, LPA No. 383 of 2019,** decided on 20.02.2019**, Dr. Vijay Khariwal Vs. State of Punjab, 2013(4) SCT 302, S.N. Narula Vs. Union of India, 2011(4) SCC 591** and **Union of India Vs. Mayaram, 2016(1) SCT 275.**

37. Learned counsel for the petitioner also argued that Rule 9(2) of 1970 Rules also mandates that in case punishing authority disagrees with the findings of the enquiry officer on the charges, it is bound to record reasons for each disagreement and record its own finding on such charges. As against said statutory mandate, even though a dissenting note (Annexure P-18) was recorded by the punishing authority, but the same does not deal with the findings of the enquiry officer and cannot be termed as disagreement. Punishment order passed on the basis of such dissent is, therefore, not sustainable.

38. It was further submitted on behalf of the petitioner by learned counsels that having been dismissed once vide order dated 17.06.2016, she could not have been dismissed once again as per settled position in law. To buttress the same, reference may be had to **State of Maharashtra Vs. Vijay Kumar Aggarwal, Civil Appeal No. 1020-2021 of 2014, SLP(C) 2920-2921 of 2014.**

38. On merits, the assessment carried out by the petitioner was justified on the ground that the same was made on the basis of orders of her superior Sh. Beesla, AETC under whom the petitioner was working at the relevant time. The same has been duly taken note of by the enquiry officer in his report(Annexure P-3). The enquiry officer, therefore, held the charge against the petitioner as baseless. Thus, once assessment was done by the petitioner under the orders of her superiors and the assessment order is well within her jurisdiction, she could not have been charge-sheeted on this count.

39. Learned counsel also argued that the petitioner has been meted out with hostile discrimination in as much as said superior (AETC) has been let off and no action has been taken against him.

40. Per contra, Mr. P.S. Bajwa, learned Additional Advocate General, Punjab appearing for respondents argued that entire emphasis on the procedural violation as envisaged under 1970 Rules is misplaced. Not only there has been no violation, but petitioner was let off on many occasions in past and the punishing authority took a holistic and collective view, which ultimately culminated into her dismissal. He submitted that the argument that once the petitioner was compulsorily retired and, therefore, ceased to be an employee of department, she could not have been dismissed, does not lie in the mouth of the petitioner. He submitted that once petitioner had chosen to challenge her compulsory retirement, which was stayed by this Court, she continued to be an employee of the department and, therefore, the department was well within its right to proceed against her pursuant to independent departmental proceedings which led to her dismissal.

41. He further argued that the petitioner was charged with violating the orders of this Court in the matter of Pankaj Motors, Moga pertaining to financial year 2005-06. Designated Officer-cum-Assistant Excise and Taxation Commissioner was to re-assess the case of Pankaj Motor and not the petitioner who is an Excise and Taxation Officer. The petitioner not only assessed the case for 2005-06, but also those of the same firm for 2007-08 and 2008-09 without any directions from the higher authorities. While passing the assessment orders, the petitioner reduced the demand blatantly without assigning any reason for the same. As if this was not enough, she neither examined nor included the CSD sale verification in the file, what to talk of levying tax on this basis. Furthermore, her powers of assessment were withdrawn with effect from 26.12.2013 by the department, but despite this the petitioner carried out and framed assessments in as many as three cases.

42. Learned Additional Advocate General, Punjab relied on threadbare details given in affidavit dated 11.12.2018 deposed by Sh. Daljeet Singh, Under Secretary, Government of Punjab filed in response to CWP No. 15212 of 2018. He argued that the petitioner has indulged in blatant misuse of powers conferred upon her by the Government and is not entitled to any indulgence by way of judicial review under Article 226 of the Constitution of India. He submitted that the petitioner has misused her official position by extending undue benefits to dealers not in one or two cases, but in series of cases. The petitioner deliberately used to assess the cases in a manner so as to create only nominal and meager demands. He relied on following illustrative list of cases in support of his arguments:-

S. No.	Firm Name	Annual GTO (in crores of rupees)	Assessment year and case type	Order sheet on file	Date of assessment order	Demand created	Discrepancy detected (in crores) (FSD=first stage discrepancy. SSD=second stage discrepancy, TI=Tax involved
1	M/s Ashoka Enterprises	33.88	2010-11	NO	03.06.2013	3000	FSD=.71 TI=0.028 SSD=41.04 TI=2.26
2	M/s Ashoka Enterprises	59.88	2011-12	NO	31.03.2014	2000	FSD=7.58 TI=0.38 SSD=8.37 TI=.42 TSD=13.06 TI=.065
3	M/s Ashoka Metals and Chemicals	33.88	2010-11	NO	03.06.2013	3000	FSD=2.94 TI=0.16 SSD=22.1 TI=1.21
4	M/s Ashoka Metals and Chemicals (TIN-03071112168)	38.81	2011-12	NO	31.03.2014	2000	FSD=2.01 TI=0.10 SSD=28.8 TI=1.45
5	Himalaya Chemicals (TIN-03441111334)	53.91	2009-10	NO	15.11.2012	1500	FSD=10.92 TI=.43 SSD=3.21 TI=0.12
6	Himalaya Chemicals (TIN-03441111334)	64.33	2010-11	NO	15.11.2012	1500	FSD=1.64 TI=0.9 SSD=24.9 TI=1.36
7	Himalaya	69.28	2011-12	NO	31.3.2014	3000	FSD=29.56

	Chemicals (TIN-03441111334)						TI=1.62 SSD=18 TI=0.96

43. He further argued that petitioner committed gross negligence in her official work and misused/ embezzled government money. She indulged in excessive corruption by collecting the amount of additional demand from M/s Bajaj Engineering and M/s Bajaj International directly, in an unauthorized way and did not deposit it in the government Treasury. She conducted the assessment of M/s Bajaj Engineering for 2004-05 and created demand of Rs.1,36,400/- as tax and Rs.1,36,400/- as penalty and Rs.2,500/- as additional penalty thus, creating a total demand of Rs.2,75,300/-. Similarly, in the case of M/s Bajaj International, Ludhiana, while conducting assessment for 2004-05, she created demand of Rs.1,01,200/- as tax and Rs.1,01,200/- as penalty and Rs.2500/- as additional penalty, thus, creating a total demand of Rs.2,04,900/-. However, rather than depositing these amounts in government Treasury/ bank through ST XI Challan, the petitioner took the amount in an unauthorized way simply by giving acknowledgments on plain paper under her signatures, as follows:-

Sr.No.	Dated	Amount
1	29.11.2004	1,50,000/-
2	29.12.2004	1,25,000/-
3	02.02.2005	1,00,000/-
4	02.03.2005	1,00,000/-

44. Learned State counsel argued that aforesaid conduct of petitioner speaks volume about her misadventure and misconduct. As if this was not enough, rather than depositing these amounts in the government Treasury, she used it personally. When it came to the notice of the District-Incharge, she was instructed to present the Treasury receipts vide letter dated 01.06.2005, but she failed to present these receipts and she gave it in writing that amount due from M/s Bajaj Engineering would be deposited. This

shows that she confessed her guilt/ charge and these amounts were not deposited in the government Treasury, which has also been confirmed from the Treasury office. Eventually, on 10.06.2005 receipt of Rs.2,75,300/- due from M/s Bajaj Engineering(India) after depositing it in the government Treasury was presented before the district authority, but no proof of payment of amount due from M/s Bajaj International was ever presented by her. As per the Punjab Financial Rules, the government money is to be deposited on the same day or on next date's morning, in the Treasury. But the petitioner made a blatant abuse and committed quintessential clear violation of these rules. Moreover, demand created as per Punjab General Sales Tax is to be deposited directly through ST XI form/ challan in the government Treasury or bank or is to be deposited by issuing a cheque in the name of concerned District Authority, but the petitioner herself received this amount directly in an unauthorized way and issued receipt under her own signatures on a plain paper. By doing so, she violated government instructions/ rules and by indulging in embezzlement of government money, she has indulged in blatant corruption.

45. He further submitted that in the light of above facts it is crystal clear that such credentials of the petitioner show that she was unworthy of and unsuitable for retention in service. It was her duty to safeguard government revenue. She could not use the same for own purposes and play with it. Learned State counsel further submitted that the subsequent dismissal order passed by the competent authority is in supersession of the order of compulsory retirement and warrants no interference by this Court.

46. Having evaluated the rival arguments, I am in agreement with the principle of law enunciated in judgments cited by the learned counsel for the petitioner while contending that a non-speaking order cannot stand the

scrutiny of law in as much as it does not reflect as to what transpired in the mind of competent/ disciplinary authority while declining to accept the claim of the delinquent employee. Not only the delinquent employee is entitled to know the reasons that weighed in the mind of the authority but even the Court has to be in a position to know as to what was the reason for the competent/ disciplinary authority in coming to the conclusion for awarding the punishment. However, my agreement with her ends there as, in my opinion, the impugned order dated 17.06.2016 is sufficiently reasoned justifying the rejection of the contentions of the petitioner, leading to the award of the major penalty of dismissal from service.

47. The argument of learned counsel for petitioner that in view of compulsory retirement of the petitioner vide order dated 22/27.10.2014, she could not have been proceeded against afresh and, therefore, the dismissal order dated 17.06.2016 is illegal and is liable to be set aside on that short ground, is not sustainable for the reasons already recorded while dealing with the charge-sheet dated 19.11.2014 and disposing of CWP No. 6858 of 2015). I have already recorded my finding that at the relevant time the petitioner continued in service and, therefore, competent authority was fully empowered to proceed against petitioner by issuing fresh charge-sheet and initiating departmental proceedings pursuant thereto. The said contention of the learned counsel for the petitioner is being considered only to be rejected. At the cost of repetition, it may be mentioned that there was a subsisting stay order dated 04.12.2014,reproduced in the preceding part of the judgment, whereby operation of the compulsory retirement notice/order dated 22.10.2014 was stayed. Ultimately, while deciding and allowing CWP No. 23287 of 2014 vide the instant judgment, said compulsory retirement order has been set aside. Necessary corollary thereof would be that petitioner

continued uninterrupted in her service as on 17.06.2016 when the dismissal order was passed. That being the situation, the contention that petitioner had already ceased to be in service, when impugned dismissal order dated 17.06.2016 was passed, has to be necessarily rejected on that account.

48. Regarding dismissal order dated 17.06.2016, I am of the opinion that necessary procedure was followed before passing the same, it is justified on merits of the case, is legally sound and no interference is warranted by this Court.

49. No doubt, the Enquiry Officer had returned the finding on the charges as not proved essentially on the following three grounds:-

(i) Per notification dated 31.03.2005 issued by the State, ETO and AETC both are Designated Officers. The charge leveled against the petitioner that she unauthorizedly carried out the assessment was, therefore, held as not proved;

(ii) In the event of wrong decision of an assessment rendered by a competent Tax Authority (ETO) no charge-sheet can be issued; and

(iii) a Sales Tax Officer cannot be charged for causing financial loss to the State Revenue until completion of *suo motu* re-assessment.

Disagreeing with aforesaid finding recorded by the Enquiry officer, respondent No.1/Excise and Taxation Commissioner gave a detailed dissenting note dated 06.05.2016. Additional Chief Secretary(Taxation), Punjab, Department of Excise and Taxation considered the matter in its entirety and sustained the reasoning contained in the dissenting note *ibid* before passing order dated 21.02.2018(Annexure P-20) vide which the petitioner was awarded punishment of dismissal from service. The competent authority had the statutory power of differing with the report/finding of the Enquiry Officer. To my mind, in the facts and circumstances of the case, the said power has been rightly and properly exercised by the competent authority and no fault can be found with the same.

50. The argument of learned counsel for the petitioner that in view of the conceded position of the department that an Excise and Taxation Officer is a Designated Officer as much as an Assistant Excise and Taxation Commissioner. In abstract sense, that may be correct when seen from general point of view. The position herein is entirely different. This Court in no uncertain terms while disposing of Civil Writ Petition No. 369 of 2008 had directed that "The Designated Officer" who was added in the memo of parties, was to carry out the fresh assessment. To be noted, the direction was not that "A Designated Officer" as sought to be projected by learned counsel for the petitioner to justify that petitioner being a Designated Officer was empowered to carry out the fresh assessment qua M/s Pankaj Motors. Admittedly, the petitioner was not "the concerned Designated Officer" in terms of the order of this Court in CWP No. 369 of 2008.

51. The glaring instances of financial misdemeanor committed by the petitioner stood proved. The petitioner's version does not inspire any confidence. The conclusions to that effect seem to have been rightly drawn by and the petitioner's misdemeanor rightly weighed in the mind of the competent authority while passing the dismissal order. The petitioner throughout her career had been charge-sheeted from time to time on various occasions, but seems to have been let off leniently each time. It seems that she finally ran out of her luck when a holistic view was taken by the competent authority in the backdrop of her entire career graph.

52. As regards the reliance placed by learned counsel for the petitioner on the S.N. Narula's case (supra), the same is not applicable to the present

case. Neither it is shown that non-specification of penalty in the charge-sheet deprived the petitioner of an opportunity to show cause against proportionality of punishment to be inflicted upon her nor even otherwise has it been pleaded by the petitioner that she was thereby prejudiced. Resultantly, CWP No. 20607 of 2016, being devoid of merit is, therefore, dismissed.

53. As a result of the dismissal of CWP No. 20607 of 2016, the order dated 17.06.2016 for petitioner's dismissal from service holds the field. In the premise, subsequent dismissal order dated 28.02.2018, leading to the filing of CWP No. 15212 of 2018 needs no independent discussion on the short ground that petitioner's case is covered by catena of judgments rendered from time to time holding that once an employee is dismissed from service, he/ she ceases to be on the rolls of the department and, therefore, cannot be dismissed again.

54. In the present case since petitioner had already been dismissed vide prior order dated 17.06.2016 and the said order has been upheld, therefore, on that short ground subsequent dismissal order dated 28.02.2018 does not stand the scrutiny of law and is liable to be set aside.

55. In the premise, CWP No. 15212 of 2018 is allowed and the subsequent dismissal order dated 28.02.2018 is set aside.

56. The net result of the above discussion is that CWP No. 23287 of 2014 and 15212 of 2018 are allowed and the orders impugned therein are quashed, while CWP No. 20607 of 2016 challenging the dismissal order dated 17.06.2016 is dismissed. So far as CWP No. 6858 of 2015 is concerned, the same is dismissed as the impugned charge-sheet dated 19.11.2014 subsumed into the dismissal order dated 17.06.2016 which has already been upheld, thus rendering CWP No. 6858of 2015 as infructuous.

57. In the parting, I may hasten to add here that it is a strange paradox and irony of fate of the petitioner, though unintended, that she has self-inflicted greater injury to herself than were to be caused, had she not challenged the order for her compulsory retirement. In that eventuality, in ordinary course, on compulsory retirement, she would have got her pensionary/ retiral benefits. Instead, she chose to challenge the order of her compulsory retirement which resulted into her continuation in service. During the resultant continuance of her service, the order dated 17.06.2016 for her dismissal was passed, which has been upheld herein by this Court. As a necessary consequence of the dismissal from service, the petitioner would not be entitled to any pensionary or post retiral benefits. Be that as it may, such a situation is an inevitable collateral damage, being by-product of the uncertainties, hazards and vagaries of litigation, difficult to be foreseen or correctly visualized and gets unfolded only with hindsight.

December 03, 2019 **(ARUN MONGA)**
Jiten **JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No