

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

**CWP-35341-2019 (O&M)
Date of Decision:05.12.2019**

Gian Chand

... Petitioner

Versus

State of Punjab & another

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. Bhupinder Banga, Advocate for the petitioner.

....

TEJINDER SINGH DHINDSA, J. (ORAL)

As per pleadings on record, petitioner while serving on the post of Inspector, Cooperative Societies, State of Punjab was imposed a major penalty of stoppage of 4 annual increments with cumulative effect vide order dated 27.10.2008 passed by the Registrar, Cooperative Societies, Punjab (Annexure P-6).

Instant writ petition has been filed seeking a mandamus to direct the respondents to release the increments that had been stopped along with interest on the premise that in the criminal trial that the petitioner had faced, he has earned acquittal by virtue of judgment dated 14.01.2015 passed by the trial Court (Annexure P-9).

Counsel would vehemently contend that the major penalty of stoppage of 4 annual increments with cumulative effect was in pursuance to a departmental inquiry having been initiated. On the same very set of allegations, the department had got an FIR registered and in the trial that has ensued, the petitioner has earned acquittal. It is urged that on account of earning acquittal in the criminal proceedings, the basis of imposition of

major penalty of stoppage of 4 annual increments with cumulative effect ceases to exist and as such the petitioner is vested with a right to be granted back the entire financial benefits in the shape of increments that had been withheld in terms of order dated 27.10.2008 at Annexure P-6.

Having heard counsel for the petitioner at length and having perused the pleadings on record, this Court is of the considered view that there is no merit in the instant writ petition.

It has gone uncontroverted that while the petitioner was serving on the post of Inspector under the Cooperation Department, an embezzlement of Rs.52 lakhs approximately took place in the Cooperative Agricultural Society and during a point of time when the petitioner was posted as Incharge. Departmental proceedings were initiated against the petitioner in terms of issuance of a charge sheet under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 on 20.02.2006. Inquiry Officer was appointed. Findings were returned by the Inquiry Officer holding the petitioner to be not fully guilty of the charges formulated against him. The Punishing Authority however disagreed with the report of the Inquiry Officer and imposed the penalty of withholding of 4 annual increments with cumulative effect. At that stage, petitioner preferred an appeal before the Financial Commissioner. Such appeal was however heard by the Secretary, Cooperation and who reduced the punishment to that of stoppage of 1 increment without cumulative effect. Thereafter, the Financial Commissioner took a *Suo Moto* cognizance, issued notice to the petitioner and after affording an opportunity of hearing, set aside the order of the Secretary and affirmed the initial order passed by the Punishing Authority

imposing upon the petitioner the major penalty of stoppage of 4 annual increments with cumulative effect.

In other words, the major penalty imposed upon the petitioner was upon culmination of departmental proceedings in a regular inquiry. The precise case set up on behalf of the petitioner is that on the same set of allegations, he has faced criminal prosecution and has since been acquitted.

In the considered view of this Court, acquittal of the petitioner in criminal proceedings, be it on the same very set of allegations, cannot be made the basis of setting aside an order of major penalty that had been imposed based upon regular departmental proceedings. Such view is being taken for the reason that the scope of a departmental inquiry is at complete variance to a criminal trial. A departmental inquiry proceeds on the principles of preponderance of probability as opposed to a criminal trial wherein the prosecution has to prove the guilt of the accused beyond any shadow of doubt. Acquittal of the petitioner by virtue of judgment dated 14.01.2015 (Annexure P-9) passed by the trial Court cannot have the effect of setting aside the entire departmental proceedings/regular inquiry and the view taken by the Punishing Authority and which subsequently stands affirmed even by the Financial Commissioner. The contention as such raised by the petitioner is without merit.

Yet another aspect which has weighed with this Court is that the action of the respondent authority/Punishing Authority in imposing the major penalty of stoppage of 4 annual increments with cumulative effect and as affirmed by the Financial Commissioner was challenged by the petitioner by filing a **CWP-7740-2012** titled as **Gian Chand Vs. State of Punjab &**

others and such writ petition was dismissed by a Coordinate Bench of this Court on 27.04.2012.

In view of the reasons recorded herein above, instant writ petition is found to be bereft of merit.

Dismissed.

05.12.2019

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |