

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

**CWP No. 4460 of 2021 (O&M)
Date of Decision: 20.09.2022**

Kirpal Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Kshitij Sharma, Advocate
for the petitioner.

Mr. Mohit Kapoor, Additional Advocate General, Punjab.

JAISHREE THAKUR, J.

1. The petitioner herein by way of instant writ petition seeks quashing of order dated 27.8.2018 (Annexure P/7) passed by the respondent No. 2 i.e. Commissioner of Police, Jalandhar, whereby three years approved service of the petitioner has been forfeited permanently with future effect for the purpose of increments and orders dated 05.12.2018 (Annexure P/9), dated 09.05.2019 (Annexure P/10) and order dated 15.09.2020 (Annexure P/12) passed by the Appellate Authorities whereby the appeal as well as mercy petition of the petitioner, have been rejected respectively. He further prays to set aside the inquiry report dated 03.07.2018 (Annexure P/5) submitted by the Inquiry Officer.

2. In brief, the facts as stated, are that the petitioner joined the police department on 26.11.1986 as a Constable and after wards was promoted as Head Constable on 01.02.1992 and eventually was promoted as

Assistant Sub-Inspector on 25.04.2011. The petitioner was posted as an Investigating Officer at Police Station Navi Baradari, Police Commissionerate, Jalandhar. He had investigated an FIR No. 185 dated 25.09.2015 under Sections 406, 420, 120-B IPC, Police Station Navi Baradari, Police Commissionerate Jalandhar (P-1). The accused in the aforesaid F.I.R, namely Vijay Chadha and Naresh Chadha had respectively, applied for anticipatory bail before Sh. Harbans Singh Lekhi, Additional Sessions Judge, Jalandhar. As per orders dated 16.02.2016 passed by the learned Additional Sessions Judge, Jalandhar, the counsel for the accused withdrew the application for anticipatory bail. In this regard, the petitioner entered '*Jimni*' No. 12-A dated 16.02.2016 in the Police Station Navi Baradari, Police Commissionerate Jalandhar. The allegation against the petitioner is that despite having knowledge of withdrawal of bail application in the FIR which was registered under Sections 406, 420, 120-B IPC, which are non-bailable offences, and no further order was made by the learned Court in this regard, the petitioner in connivance with the accused released them on police bail on taking ₹50,000/- from them as bail bonds.

3. Due to the aforesaid misconduct and negligence of the petitioner, a departmental inquiry was initiated against him by the competent authority i.e. Commissioner of Police, Jalandhar, vide office order No. 25348-54 dated 22.03.2017 and the same was entrusted to the Assistant Commissioner of Police (Investigation), Police Commissionerate Jalandhar. Earlier Ajay Chadha had filed a complaint bearing No. 95 of 2020 dated 12.6.2014 against his brother, namely Vijay Chadha, which was

dismissed by the learned Judicial Magistrate, Ist Class, Jalandhar, holding that the complaint filed by Ajay Chadha failed to establish the guilt of the accused—Vijay Chadha. After two years of the submission of the cancellation report, which was duly approved by the office of the Commissioner of Police, Jalandhar, as is evident from the opinion of the District Attorney (Legal) dated 30.3.2015, a complaint was filed alleging that the petitioner admitted the accused—Vijay Chadha on bail, which led to initiation of the charge sheet and departmental proceedings against the petitioner. The Inquiry Officer submitted his findings (P-5) before the punishing authority, in which the petitioner was held guilty of only one charge out of three leveled against him. After receiving the findings (P-5) of the Inquiry Officer, a Show Cause Notice dated 30.07.2018 (P-6) was issued upon the petitioner, proposing therein as to why five years approved service of the petitioner may not be forfeited with permanent effect for the purpose of future increments with the directions to submit his written reply within the stipulated period of ten days. The petitioner submitted his written reply to Show Cause Notice and also oral submissions by appearing before the punishing authority i.e. Commissioner of Police, Jalandhar on 13.08.2018. After examining inquiry report, all the relevant documents of the departmental inquiry, as well as the written reply to the show cause notice, submitted by the petitioner, the Commissioner of Police, Jalandhar (respondent No. 2) passed order dated 27.08.2018 (P-7) vide which three years of approved service of the petitioner was forfeited permanently with future effect for the purpose of increments. Thereafter, feeling aggrieved

the petitioner preferred an appeal, as well as a mercy petition, against the aforesaid order dated 27.08.2018 (P-7) before the Appellate Authorities and the same were rejected vide orders dated 05.12.2018 (P-9), 09.05.2019 (P-10) and 15.09.2020 (P-12) respectively. Hence the present writ petition.

4. Mr. Kshitij Sharma, learned counsel for the petitioner would assail the impugned inquiry report and the subsequent orders by contending that the inquiry report itself has not taken into consideration the statement of the defense witness DW2, who categorically submitted that the petitioner had been called in the office of the then Assistant Commissioner of Police, Jalandhar and on his asking prepared the bail bonds of the accused. It is argued that the petitioner had prepared the bail bonds on the asking of the ACP and can not be faulted as such. It is argued that the statement of the defense witness, who is none other than a police official, made in favour of the petitioner, goes un rebutted and not taken due note of.

5. Per contra, Mr Mohit Kapoor learned Additional Advocate General, Punjab, submits that the petitioner had deliberately, in connivance with the accused, accepted the bail bonds despite being aware that the bail application stood withdrawn. This amounted to dereliction of duty and thereafter departmental proceedings were initiated and inquiry was initiated. It is further submitted that the petitioner was given full opportunity of hearing and due process was followed. Initially, it had been proposed to forfeit five years of service with permanent effect of the petitioner for the purpose of increments, which on hearing was reduced to three and therefore no ground is made out for this court to exercise writ jurisdiction.

6. I have heard the counsel for the parties and with their assistance have gone through the pleadings of the case.

7. The petitioner herein has been punished with forfeiture of three increments with permanent effect, after he was found guilty of misconduct and dereliction of duty in the departmental proceedings. The petitioner was charged with accepting bail bonds in offences that were non bailable, despite being in the knowledge that the anticipatory bail application of the accused stood withdrawn and no orders were passed. An allegation was also made that the petitioner had changed the *Jimni no* 12A dated 12.6.2016. A departmental inquiry was held and the Inquiry Officer, after following due procedure, found the petitioner guilty of accepting bail bonds despite anticipatory bail application was withdrawn. However, as regards the other charge of changing the jimni, the same was not proved. His appeal and the mercy petition stood dismissed.

8. The petitioner herein who had been charged with admitting accused Vijay Chadha on bail and accepting bail bonds for a sum of ₹50,000/-, despite the fact that his bail application stood withdrawn, had taken a definite stand before the Inquiry Officer that he had been summoned to the office of the Assistant Commissioner of Police, Jalandhar, and on his asking he had admitted the accused on bail. In support of his contention, he had produced PPHC Rajesh Kumar as DW.2, who in his statement stated that he, along with the petitioner—Kirpal Singh, went to the court in reference to FIR No. 185/2015 under Sections 406, 420, 120-B IPC as the bail application was fixed on that day. On reaching the court, they came to

know that the application has been withdrawn by the counsel for the accused. At that moment, the petitioner herein received a call from the office of the Commissioner of Police, Jalandhar. The petitioner went inside the office of A.C.P. Sh. Dev Dutt Sharma while he waited outside the office. He further stated that *“after some time I was called inside the office where along with ACP sir, ASI Kirpal Singh was there and along with them 2 private persons were also sitting, to which I came to know later that he was accused in the said matter because I was asked to make arrest report of Vijay Chadha. ASI Kirpal Singh verified about Vijay Chadha on the asking of the ACP sir in front of me and on his asking only Vijay Chadha was released on bail bonds and the bail bond was given by Praveen who came along with Vijay Chadha and the jimny no. 12-A was registered on 16.2.2016 and same was kept in missal report.”*

9. It would be relevant to note that the statement of this defence witness goes un rebutted as the witness was not put to cross-examination. The statement of DW.3 Praveen was also recorded, who categorically stated that in his presence, the petitioner was called to come and be present in the office of ACP Central, Sh. Dev Dutt Sharma along with record pertaining to the case of Vijay Chadha. The ACP considered the opinion as sought from DA Legal and thereafter, the petitioner was asked to take bail of the accused, which he did accordingly. The witness further stated that he deposited the bail bond and signed bail papers. He further stated that the petitioner did the entire paper work in the office of the ACP only. This witness was put to cross-examination but nothing was elicited from him that

would support the allegation of the prosecution to the extent that petitioner admitted accused—Vijay Chadha to bail in connivance with the accused , but statement is to the contrary. The inquiry report, while noting down all the contentions raised has not dealt with the pleas as raised by the petitioner that he admitted Vijay Chadha to bail on the asking of his senior officer i.e. Assistant Commissioner of Police, Central, Sh. Dev Dutt Sharma. The other charge of changing the jimni No. 12-A was not proved. Even the order awarding punishment passed after considering the reply to the show cause notice holds that the explanation to the show cause notice is not acceptable. The order is cryptic, which states *“this evidential statement of the accused is unbelievable, the person is on ASI Rank and he should not have obeyed any illegal order. The evidence and the statement given by Kirpal Singh is not justified and kind be believed upon.”*

10. The disciplinary authority has summarily dismissed the explanation given by the petitioner herein as to why bail bonds were accepted by him. There was an undisputed statement given by DW.2 to the effect that the petitioner had been summoned in the office of the ACP and that bail bonds were accepted on the asking of the ACP. Moreover, the petitioner herein had given a categoric reply that the bail bond of accused—Vijay Chadha had been accepted only after the opinion was received from the DA Legal, Shri Angrez Singh and this opinion had been sought by the Commissioner of Police himself. The DA Legal had opined that the matter is of a civil nature and on that basis had asked the office to file the said matter. It has been brought on record that the dispute was between two

brothers, namely, Ajay Chadha and Vijay Chadha and there was an agreement between the two, wherein the complainant of the FIR was to give ₹50 lakhs to Vijay Chadha, but he had given only ₹6 lakhs as he wanted to back out of the agreement. The inquiry report has not dealt with this issue nor has the appellate authority taken this factor into account and held the petitioner guilty by simply stating that he should not have obeyed illegal order of his superior. There is no consideration either by the Inquiry Officer or the disciplinary authority that opinion had been sought by the ACP regarding the nature of the case.

11. Rule 16.31 of the Punjab Police Rules, 1934 abundantly makes it clear that every order passed in the appeal shall contain the reasons therefor, which are lacking in the instant case. This Court in **Paramjit Singh, Ex-Head Constable Versus State of Punjab 1996 (1) RSJ 515** held that the Appellate Authority is required to give a reasoned order while disposing of the appeal. In the instant case, the punishing authority as well as the appellate authority have totally ignored the points so raised by the petitioner and have rejected his appeal and mercy petition while passing a cryptic order. The authorities have failed to take into account that cancellation report had been submitted in the FIR filed by the complainant —Ajay Chadha against Vijay Chadha, as there was no evidence available. A complaint was again filed by said Ajay Chadha after gap of two years on the allegations that his brother had been admitted to bail by the petitioner without any order of the court. These arguments should have been dealt with by the Inquiry Officer.

13. The power of the High Court under Article 226 of the Constitution of India pertaining to judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities is limited to the extent of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. In **Deputy General Manager (Appellate Authority) and others vs. Ajay Kumar Srivastava 2021 (2) SCC 612**, the Supreme Court, while dealing with the issue of power of judicial review in the matters of disciplinary inquiries, held as:

“23. The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional Courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has been earlier examined by this Court in State of Tamil Nadu v. T.V. Venuaopalan, 1994(6) SCC 302 and later in Government of T.N. and another v. A. Rajapandian, 1995(1) SCC 216 and further examined by the three Judge Bench of this Court in B.C. Chaturvedi v. Union of India and others, 1995(6) SCC 749 wherein it has been held as under:-

"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be

permitted to be canvassed before the Court/Tribunal. In Union of India v. H.C. Goel [(1964) 4 SCR 718] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

24. It has been consistently followed in the later decision of this Court in Himachal Pradesh State Electricity Board Limited v. Mahesh Dahiya , 2017(1) SCC 768 and recently by the three Judge Bench of this Court in Pravin Kumar v. Union of India and others, 2020(9) SCC 471.

25. It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority if based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact. 26. When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is to examine and determine: (i) whether the enquiry was held by the competent authority; (ii) whether rules of natural justice are complied with; (iii) whether the findings or

conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

27. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.

28. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.”

14. A perusal of the inquiry report would reveal that the defence as taken by the petitioner was not considered or appreciated in its true perspective, especially when statement made by the defense witness, who is from the same department, in favour of the petitioner goes unrebutted. As has been held in **Deputy Manager (Supra)** that allegations must be established by evidence, which upon consideration could uphold the gravity of charge against a delinquent employee. The findings in the inquiry report are thus not substantiated and are set aside.

15. Consequently, the writ petition is allowed, the inquiry report

dated 3.7.2018 (Annexure P/5), the impugned dated 27.8.2018 (Annexure P/7) and all the subsequent orders passed by the respondents are set aside.

20.09.2022
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No