

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

CWP-8174-2019

Reserved on 21.11.2022

Pronounced on: 22.12.2022

Suresh Kumar

.... Petitioner

Versus

Punjab State Power Corporation Limited and others

.... Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

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

Mr. Alok Mittal, Advocate,
for the respondents.

JAISHREE THAKUR.J

1. The petitioner has filed the instant petition seeking a writ in the nature of certiorari for quashing of departmental inquiry initiated against him on the basis of which, he has been punished with stoppage of two annual increments with future effect, vide order dated 29.12.2016, which punishment in appeal, was reduced to one annual increment with future effect. He also seeks a writ in the nature of mandamus seeking direction to the respondents to restore his one annual increment.

2. The facts of the case are that the petitioner remained posted as Additional Assistant Engineer from 30.05.2012 to 18.11.2013 at Malsian Sub Division of the respondent Corporation. He was incharge of inspecting the electricity meter of one M/s Subhash Ice Factory. On surprise inspection, the

meter of the Ice Factory was found tampered with and the factory was charged with theft of electricity. A departmental inquiry was initiated against the petitioner for negligence of his duty, as he failed to notice the tampering of the meter earlier, despite checking the meter every month. The petitioner was charge-sheeted by the respondent Corporation on the grounds that he failed to check theft of electricity and was not maintaining the Energy Variation Register, which was in violation of the instructions and thus had failed to perform his duties assigned. The respondents held him guilty as per report of the Inquiry Officer and punished with stoppage of two future increments. The Ice Factory owner, however, was acquitted of charge of theft of electricity by the trial Court and no appeal had been preferred against the order of acquittal. The petitioner went in appeal against the order of punishment and the Appellate Authority reduced the punishment from stoppage of two annual increments to stoppage of one annual increment. It is pleaded that previous record of the petitioner has been good and imposition of this penalty would put a blot on his record.

3. Learned counsel for the petitioner would argue that there are lacunae in the departmental proceedings. Other than the Presenting Officer, no witness was examined to prove the charges against him and the Presenting Officer himself admitted that he had no knowledge of the charges against the petitioner. It is submitted that the lab report dated 11.06.2013 which reflected “*Dial Test OK, Scroll Key Defective*” was not duly proved by the author of the report. The report was wrongly accepted and used against the petitioner. It is also argued that the petitioner was not in possession of the Energy

Variation Register as the same was never handed over to him and, therefore, he could have not been found guilty for not maintaining the same. It is further argued that the procedure in cases of theft of electricity as per the Electricity Supply Code and Related Matters Regulations 2007, requires photography/ videography to be done. Rule 37.1.4 would detail that no case of theft shall be booked merely on account of the seals of the meter missing or tampered or breakage of window glass unless dishonest abstraction of electricity through these means is corroborated by consumption pattern of the consumer and such other evidence as may be available. It is argued that in the instant case neither were the seals nor the window glass broken. The Officer is also to videograph the means of theft of electricity with a camera which was not done in the instant case.

4. Counsel appearing on behalf of the petitioner would rely upon judgment of the Hon'ble Supreme Court in ***Roop Singh Negi Versus Punjab National Bank and others, 2009(2) SCC 570***, wherein it has been held that the Inquiry Officer performs a quasi judicial function and the charges levelled against the delinquent officer must be proved. It is submitted that in the instant case, reliance has been placed upon the lab report which has not been proved in accordance with law. In the judgment in ***K.C. Arora Versus State of Haryana, 1997(2) SCT 324***, it has been held that reliance upon the documents produced on the record by the department without examining the person who prepared the same or who collected the same and without affording an opportunity to the delinquent to cross examine such witness, such document (lab report in the instant case) cannot be taken into

consideration. Reliance has also been placed upon the judgment in ***Rajiv Arora Versus Union of India and others, 2009(3) SCC (Crl.) 977*** to submit that where there is gross violation of the principles of natural justice, the High Court should exercise its jurisdiction of judicial review.

5. Counsel for the petitioner would urge that an FIR No.223, dated 17.06.2013 was registered against the consumer M/s Subhash Ice Factory, under Section 135 of the Electricity Act, 2003, however, he was acquitted vide judgment dated 01.09.2015 and, therefore, if the theft of electricity has not been established, the petitioner cannot be held liable for the charge of theft of electricity.

6. *Per contra*, learned counsel appearing on behalf of the respondents would urge that the charge sheet was issued to the petitioner for not maintaining the Energy Variation Register and not exercising due diligence in so far as he did not detect the theft of electricity/meter tampering. It is submitted that due process was followed as the charge-sheet was served upon the petitioner and he was given due opportunity to cross-examine the witness and lead his own evidence. The petitioner was in fact to maintain the Energy Variation Register, which was not done. The petitioner was recording the reading of the consumer every month, yet the discrepancy/variation of consumption of electricity by the consumer Ice Factory was not reported by him. The Enforcement Team found the seals to be suspicious and accordingly, the meter was sent to the lab and found to be tampered with as would be evident from the lab report. It is argued that the petitioner herein is seeking a judicial review of the impugned orders. It is

well settled that the scope of judicial review of disciplinary proceedings under Articles 226/227 of the Constitution of India is limited. It is further argued that the jurisdiction of the High Court is that of a supervisory jurisdiction and the High Court does not exercise a jurisdiction as an appellate Court.

7. Counsel for the respondents would also urge that the petitioner cannot be permitted to raise new grounds in the writ petition in so far as taking the plea that the videography was not done. It is for the first time this plea has been taken in the writ petition.

8. I have heard learned counsel for the parties and with their assistance have gone through the pleadings of the case and the case law as cited.

9. It is not in dispute that the petitioner herein was served with a charge-sheet on two grounds that (i) he failed to stop theft of electricity and (ii) was not maintaining the Energy Variation Register. The petitioner had checked the meter on 01.06.2013, however, did not report any tampering of the same. The Enforcement Team on 05.06.2013 found the meter to be cracked and then took the same and sent it for a lab report, which found the meter to be defective. Based on the lab report, the petitioner herein was charge-sheeted and given full opportunity to file his reply, cross-examine the witnesses. In fact due procedure was followed. The argument raised by counsel for the petitioner that the lab report which has been accepted on the basis of which he has been punished, has not been duly proved, would be of

no consequence since it is well settled that in departmental proceedings, strict law of evidence would not be applicable. In this regard, reference can be made to the law as laid down in ***Union of India & others Versus Dalbir Singh, Civil Appeal No.5848 of 2021 (Arising Out of SLP (Civil) No.24095 of 2019) dated 21.09.2021; Kanwar Amninder Singh Versus The Hon'ble High Court of Uttarakhand at Nainital through its Registrar General, Special Leave to Appeal (C) No.2507 of 2021, decided on 17.09.2021.***

10. The question of not maintaining the Energy Variation Register has also been gone into and a finding returned that the petitioner who was to maintain the same has not done so.

11. The argument of counsel for the petitioner that since the charge of electricity of theft itself was not established in the FIR, the petitioner cannot be punished for the same, is without merit because it is well established that the nature of evidence required in departmental enquiry is “*preponderance of probability*” unlike the evidence which is to be led in a criminal trial where the guilt has to be proved on evidence led by the prosecution to conclude the guilt beyond all reasonable doubt. The Hon'ble Supreme Court in ***Ajit Kumar Nag Versus General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and others, (2005) 7 SCC 764*** has held that the degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry,

on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”. It was held as under:

“11. As far as acquittal of the appellant by a criminal court is concerned, in our opinion, the said order does not preclude the Corporation from taking an action if it is otherwise permissible. In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused “beyond reasonable doubt”, he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of “preponderance of probability”. Acquittal of the appellant by a Judicial Magistrate, therefore, does not ipso facto absolve him from the liability under the disciplinary

jurisdiction of the Corporation. We are, therefore, unable to uphold the contention of the appellant that since he was acquitted by a criminal court, the impugned order dismissing him from service deserves to be quashed and set aside.”

12. The petitioner in departmental proceedings has been found to be negligent and, therefore, was imposed a punishment of stoppage of two increments with cumulative effect which has been reduced in appeal to stoppage of one annual increment. This Court while exercising writ jurisdiction under Article 226 of the Constitution of India cannot exercise jurisdiction of an appellate Court. The Court is to determine whether an enquiry was held by an authority competent in that behalf and whether the rules of natural justice are violated. If the department enquiry is held properly, there is a limited scope for interference. The basic judgment is that of ***B.C Chaturvedi Versus Union of India and others, (1995) 6 SCC 749***, wherein it was held that the power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. The judicial review is not an appeal from a decision but a review of the manner in which the decision is made. The Court is to examine as to whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. The Court held as under:-

“12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the

authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

The aforesaid judgment was subsequently followed in ***Union of India and others Versus P. Gunasekaran, (2015) 2 SCC 610*** which had laid down the broad parameters for the exercise of jurisdiction by the High Courts over

matters pertaining to disciplinary proceedings. The Court held as under:

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:

- (a) the enquiry is held by a competent authority;*
- (b) the enquiry is held according to the procedure prescribed in that behalf;*
- (c) there is violation of the principles of natural justice in conducting the proceedings;*
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- (h) the disciplinary authority had erroneously admitted*

inadmissible evidence which influenced the finding;

(i) the finding of fact is based on no evidence.

13. Therefore in view of the authoritative pronouncements of the Supreme Court that the High Court is not to sit over departmental proceedings as an appellate authority unless there is some gross violation, this Court finds no ground to exercise its writ jurisdiction in the instant matter. In view of above, this Court does not find any ground for interference and the writ petition is dismissed.

(JAISHREE THAKUR)
JUDGE

22.12.2022

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Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No