

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

(1)

**CWP No. 13433 of 2015 (O&M)
Date of Decision: 10.11.2022**

Ex-Head Warder Mohinder Singh,
Belt No. 1137, S/o Fauja Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

AND

(2)

CWP No. 21271 of 2015 (O&M)

Mohinder Singh, deceased Ex. Warder No. 212,
S/o Hari Singh, through his widow and legal heir
Sukhjeet Kaur

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. A.K. Walia, Advocate,
for the petitioner(s) (in both cases).

Mr. R.K. Kapoor, Additional Advocate General, Punjab

MAHABIR SINGH SINDHU, J.

This order shall dispose off above writ petitions as the
controversy involved in both the cases is of similar nature.

2. With the consent of parties and for the sake of brevity, relevant
facts are noticed from CWP No. 13433 of 2015.

3. Petitioner-Mohinder Singh (Belt No. 1137) has filed this writ
petition under Article 226 of the Constitution, *inter alia*, for quashing of the

impugned order dated 09.07.2014 (P-12) passed by Superintendent, Headquarter Jail, Patiala- respondent No. 3, *vide* which, he was dismissed from the post of Head Warder; further prayer is to quash the order dated 13.02.2015 (P-14), whereby an appeal against the aforesaid order was dismissed by Additional Director General of Police, Jails, Punjab-respondent No. 2.

4. Brief facts are that at relevant point, petitioner was posted at High Security Jail, Nabha. The authorities received some secret information that he had developed links with prisoners i.e. Shahid Iqbal Bhatti @ Devraj Sehgal son of Hardev Raj Sehgal (Pakistani Spy) etc. It was alleged that petitioner connived with relatives of above prisoners; allowed them to deposit an amount of Rs. 21,500/- in his bank account No. 55139960760 maintained with State Bank of Patiala (for short 'SBP') from 25.08.2011 to 01.02.2012. In order to verify the trustworthiness of secret information, Deputy Inspector General of Police, (Prisons), Punjab was deputed to conduct a preliminary enquiry in the matter.

During preliminary enquiry, the officer found substance in the secret information and a report in this regard was submitted by him to respondent No.2. After examining the same, respondent No. 2 decided to initiate disciplinary proceedings against the petitioner as well as other delinquents. Consequently, respondent No. 3, being the competent authority, issued a charge-sheet dated 03.04.2013 to the petitioner under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (for short "Punishment Rules"). In response thereto, petitioner filed reply, but the same was found to be unsatisfactory. Thereafter, Superintendent, District

Jail, Nabha was appointed as an Enquiry Officer and he submitted his report dated 22.01.2014 to respondent No. 3: thereby proving the charges levelled against the petitioner. On the basis of above enquiry report, petitioner was issued a show-cause-notice dated 31.01.2014 by respondent -3, proposing to impose major penalty under Rule 5 of the Punishment Rules. In response to show cause notice, petitioner filed his reply thereby pleading innocence. He was also afforded an opportunity of personal hearing 11.03.2014, to explain his position. However, respondent No. 3, after hearing the petitioner and upon examining the records, did not feel convinced and dismissed the petitioner from service, while passing the impugned order dated 09.07.2014.

5. Aggrieved against the dismissal order, petitioner preferred statutory appeal, but the same was rejected by respondent-2, being the appellate authority; hence, present writ petition.

6. Learned counsel for the petitioner has raised following contentions:-

- (i) Charges framed against the petitioner were ambiguous.
- (ii) Neither any independent witness; nor such evidence was brought on record, to indicate, that charges have been proved against the petitioner.
- (iii) In order to prove his innocence, neither the petitioner was allowed to produce defence witnesses; nor permitted to cross-examine the prosecution witnesses.
- (iv) The officer who conducted preliminary inquiry was not examined during regular departmental inquiry and as such, in the absence thereof, it is absolutely wrong to place reliance upon his report.

- (v) During regular inquiry, no testimony of prisoners was recorded and as such, the statement, if any, made during preliminary inquiry was completely irrelevant.
- (vi) In view of the preliminary report, it can be presumed that respondents were pre-determined to punish the petitioner; hence, regular inquiry has been conducted only as an eye wash.
- (vii) None of the authorities has taken into consideration the satisfactory length of service rendered by the petitioner, before imposing major punishment of dismissal from service.
- (viii) The authorities did not follow the service rules as well as Punishment Rules while inflicting the punishment under challenge.
- (ix) Statutory appeal has been decided only as a formality in view of the fact that dismissal order was passed with the prior approval of respondent No.2, (appellate authority) and as such, the same has caused great prejudice to the petitioner.

7. On the other hand, learned State Counsel submitted that:-

- (i) Petitioner was afforded sufficient opportunities of hearing before passing the impugned orders; hence no interference is required by this Court while entertaining the present judicial review.
- (ii) On the basis of a secret information, preliminary enquiry was conducted by the Gazetted Officer of Jail Department and after examining the same, authorities decided to conduct regular departmental enquiry. Consequently, Sh. Joga Singh Sekhon, Superintendent, District Jail, Nabha was appointed as Enquiry Officer, who submitted his report on

22.01.2014, thereby proving the charges levelled against the petitioner.

- (iii) While making reference to Annexure R-1, Ld. State Counsel submitted that petitioner himself admitted the factum of giving bank account number No. 55139960760, State Bank of Patiala, Nabha Branch to aforesaid prisoners as well as consequent deposit of Rs. 21,500/-.
- (iv) Also made reference to the averments made in para No. 4 of the affidavit dated 21.07.2016 of the Deputy Inspector General of Jails-cum-Superintendent (Headquarters), Jails, Patiala, to the effect that matter relates to “National Security” and as such, it is not necessary to make the information public.
- (v) Ld. State Counsel has also brought to the notice of this Court, that an FIR No. 30, dated 02.04.2013 (P-3) under Section 13 of the Prevention of Corruption Act, 1988; Sections 9, 42 and 45 of the Prisons Act, 1894; and Section 120-B of Indian Penal Code, 1860, was registered against the present petitioner(s) alongwith other accused, at Police Station Kotwali, Nabha, District Patiala and they have been convicted & sentenced by Id. Additional Sessions Judge, Patiala vide judgment & order dated 04.01.2017.
- (vi) Lastly submitted that in such matter(s), there is no need to prove the charge(s) like a criminal trial; rather mere preponderance of evidence is sufficient to prove the guilt.

8. Heard learned counsel for the parties and perused the paper-book.

9. Before proceeding further, it is necessary to re-capitulate the allegations levelled against the petitioner vide charge-sheet dated 03.04.2013 and which read as under:-

“Sh. Mohinder Singh Belt No.1137, Head Warder at present Central Jail, Patiala, when you were posted as Warder at District Jail Nabha, had given your account No. 55139960760 of State Bank of Patiala, Nabha Branch to prisoner Sahid Iqbal Batti s/o Amir Sahib Bhatti @ Devraj Sehgal and prisoner Kuldeep Singh @ Keepa and prisoner Suman Kumar s/o Manak Chand who were kept in barrack No.4 and barrack No.7 of Ward No.5 of Jail. You were having contacts with these prisoners in Jail and with their relatives outside through telephone. Whenever relatives of these dangerous prisoners deposited money in your account, they used to inform you and the prisoners. You were handing over money to concerned prisoners after withdrawing the same from your account. By doing so, you have established relations with dangerous prisoners in the Jail and their relatives, you gave your account number to them, supplied cash in the Jail by taking bribe from the prisoners and have done an act of putting security of country in danger by having contacts with Pakistani Spy. In this way, you have seriously violated Punjab Government Employees (Conduct) Rules, 1966 and Para No.237, 270 (c) of Punjab Jail Manual.”

10. The Enquiry Officer, while submitting report dated 22.01.2014, recorded his conclusion in the following manner:-

“ The charges of having relations with dangerous prisoners and their relatives, giving cash inside Jail by taking bribe from prisoners, putting security of country in danger by having relation with dangerous prisoners, as levelled in the charge-sheet stands proved.”

11. There is no dispute that a show cause notice was issued to the petitioner before inflicting the punishment and in response thereto, he filed written reply. It has also come on record that petitioner was afforded opportunity of personal hearing before passing the dismissal order by the competent authority.

12. There can be no two views that sharing of bank account by a Jail employee with prisoner(s) could be a dangerous proposition for the administration of criminal justice system; more particularly, when circumstances are grave in nature. In the present case, allegations are that petitioner shared his bank account with prisoners Sahid Iqbal Batti s/o Amir Sahib Bhatti @ Sehgal, Kuldeep Singh @ Keepa & Suman Kumar s/o Manak Chand, lodged in Barrack No.04 & 07 of Ward No.5 in High Security Jail, Nabha and also remained in touch with their relatives. Thus, the charges against the petitioners are of extremely serious nature and cannot be taken lightly. Still further, a perusal of para-4 of the affidavit dated 21.07.2016 clearly reveals *“that the matter relates to National Security and it is not necessary to make the information public”* and the petitioners have failed to controvert the same by way of any counter affidavit or rejoinder despite the fact that matter is pending for the last more than seven years. Also, relevant to mention here that petitioner himself admitted the factum of deposit of money in his account and reference in this regard can be made to Annexure R-1, which reads as under:-

“ Statement of Head Warder Mohinder Singh No. 1137, son of Sh. Fauza Singh resident of Village Bhurey, Tehsil Barnala, District Barnala now Central Jail, Patiala.

Stated that I was working as Warder in Maximum Security Jail, Nabha from 18-10-08 to 17-1-13. I am holding Account No. 55139960760 in State Bank of Patiala at branch Nabha. Sahib Iqbal Bhatti, prisoner was lodged in barrack No. 4 of Ward No. 5. I was on duty in these barracks and as such, I came to his contact. About one and half year ago, he told me that his relatives are not coming to see him, as they are at a far distance. He asked me to give my account number and he will deposit amount in my account. At this, I gave him my account number in jail during duty. Thereafter he told me, to check the account after 2-4 days, amount will be deposited in the account. After 4-5 days, Rs. 5000/- were deposited in my account. I withdrew this amount and after keeping Rs. 200/- with me as expenses, remaining amount of Rs. 4800/- was deposited with Munshi, who keeps coupons. After, one month, Rs. 9500/- were deposited in my account. I do not remember as to how much amount was withdrawn. I do not remember as to how much amount was deposited after the entry of Rs. 9500/-. Thereafter Rs. 5000/- and then Rs. 2000/- were deposited in my account from Jalandhar. I do not know as to who deposited this amount in my account. I do not remember how many times, I deposited amount with the Munshi. But whenever amount was deposited in my account, I used to deposit the same with Munshi after deducting my expenses. After depositing the amount with Munshi, I used to inform Sahid Iqbal Bhatti during my duty that the amount has been deposited with the Munshi. ”

It is noteworthy that Annexure R-1, has also not been controverted by the petitioner for the reasons best known to him.

13. Law is well settled that in such like matter(s), only preponderance of evidence is sufficient and there would be no need to prove

the charge like a criminal trial. Reference in this regard can be made to the celebrated judgment reported as ***State of Haryana and another Versus Rattan Singh (1997) 2 SCC 491***, authored by Justice. V.R. Krishna Iyer, which has become *locus classicus* and para-4 of the same reads as under:-

“4. It is well settled that in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and administrative tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. However, the courts below mis-directed themselves, perhaps, in insisting that passengers who had come in and gone out should be chased and brought before the tribunal before a valid finding could be recorded. The 'residuum' rule to which counsel for the respondent referred, based upon certain passages from American jurisprudence does not go to that extent nor does the passage from Halsbury insist on such rigid requirement. The simple point is, was there some evidence or was there no evidence-- not in the sense of the technical rules governing regular court proceedings but in a fair common-sense way as men of

understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainty available for the court to look into because it amounts to an error of law apparent on the record. We find, in this case, that the evidence of Chamanlal, Inspector of the flying squad, is some evidence which has relevance to the charge levelled against the respondent. Therefore, we are unable to hold that the order is invalid on that ground.”

14. *A fortiori*, it would be unacceptable to say that there is no evidence at all to prove the charges; rather initially, preliminary enquiry was conducted to know the substance in secret information and then only, a regular departmental enquiry was ordered by the competent authority. An officer of the rank of Superintendent Jail conducted the enquiry and came to the conclusion that charges were duly proved against the petitioner. There is no allegation of *mala-fide* or personal bias against the enquiry officer or either of the authorities who have passed the impugned orders; rather all have acted in a *bona-fide* manner to protect the Rule of Law.

15. It is quite apparent that as per service rules, respondent Nos. 2 & 3 were fully competent to pass the impugned orders in accordance with the Punishment Rules, being the punishing and appellate authority, respectively.

16. Moreover, as on today, both the petitioners stand convicted under the Prevention of Corruption Act as well as other ancillary offences in the following manner:-

“MOHINDER SINGH, 1137

<i>Under Section</i>	<i>Sentence R.I.</i>	<i>Fine</i>	<i>In default, S.I.</i>
<i>9, 42, 45 Prisons Act</i>	<i>Six Months</i>	<i>200/-</i>	<i>One Month.</i>
<i>120-B IPC</i>	<i>Six Months</i>	<i>200/-</i>	<i>One Month.</i>
<i>13(I)(d) P.C. Act</i>	<i>3 Years</i>	<i>5000/-</i>	<i>Three Months</i>

“MOHINDER SINGH, 212

<i>Under Section</i>	<i>Sentence R.I.</i>	<i>Fine</i>	<i>In default, S.I.</i>
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<i>13(I)(d) P.C. Act</i>	<i>3 Years</i>	<i>5000/-</i>	<i>Three Months</i>

Although petitioners are stated to have challenged their conviction; but it is still intact; and the same has not been set aside in appeal.

17. There remains no doubt that charges levelled against the petitioners were specific and which have been duly proved. It is also proved from the records that petitioner was afforded sufficient opportunities to defend the case at every stage(s) and the authorities have passed the impugned orders in consonance with the Service Rules as well as the Punishment Rules.

18. The argument that authorities did not take into consideration the length of service while imposing the major penalty of dismissal from service is wholly irrelevant in view of the serious allegations proved against the petitioner. Although, petitioner tried to raise the plea that dismissal order was passed with prior approval of appellate authority, but the same is not acceptable in view of the fact that both the authorities have passed the impugned orders after due application of mind, independently and sufficient

reasons to that effect are discernible from the same. It seems that the impugned dismissal order was endorsed to respondent No.2, just for information, being the higher authority and nothing more could be deduced from such a course adopted by respondent No.3.

19. In view of the facts and circumstances, discussed here in above, it is clearly established that course adopted by the enquiry officer as well as the punishing authority & appellate authority was perfectly legal and justified. Hence, this court does not find any infirmity or irregularity, to interfere with inquiry report or the findings as well as conclusion recorded by respondents No. 2 & 3, while passing the impugned dismissal orders.

20. As a result thereof, there is no option except to dismiss both the writ petitions.

21. Ordered accordingly.

22. Pending miscellaneous application(s), if any, shall also stand disposed off.

November 10, 2022
SN

(MAHABIR SINGH SINDHU)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>