

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

**CWP-13226-2016
Reserved on: 13.12.2022
Pronounced on: 23.12.2022**

Ishwar Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. R.N. Lohan, Advocate for the petitioner
Mr. Tapan Kumar Yadav, Deputy Advocate General, Haryana

Deepak Sibal, J.

Through the present petition the question posed for this Court's determination is as to whether this Court, in the exercise of its writ jurisdiction, can interfere with the findings returned by an enquiry officer in the course of a domestic enquiry and if the answer to such question is in the affirmative, then as to in which circumstances is such interference permissible.

The facts, in brief, are that on 24.05.2008, while the petitioner was serving as an Assistant Sub Inspector in the Haryana Police and was posted in Police Station, City Narwana, in a sting operation, he was alleged to have demanded and received bribe from two journalists. The sting operation was allegedly caught on camera and also telecast on the Star News Channel. On the basis of the afore event FIR No.123 dated 19.06.2008 under Sections 7, 13 and 49 of the Prevention of Corruption Act, 1988 (for short – the PC Act) was registered against the petitioner and

one Exemptee Head Constable Rattan Singh. On 19.06.2008 itself, by invoking Article 311(2)(b) of the Constitution of India, the Superintendent of Police, Jind (for short – the SP) also dismissed the petitioner from service. The petitioner challenged his dismissal before this Court through CWP-8838-2009- Ishwar Singh vs. State of Haryana and others which petition of his was allowed by a Single Judge on 06.09.2010. The Single Judge was of the opinion that the SP had wrongly invoked Article 311(2)(b) of the Constitution of India to dismiss the petitioner from service as in the facts and circumstances of the case it was practicable to hold a departmental enquiry against the petitioner. While setting aside the petitioner's dismissal the Single Judge granted liberty to the State to departmentally proceed against him. The respondents were further directed to hold the domestic enquiry within a reasonable time and that till the final order was passed in the petitioner's disciplinary proceedings, it was ordered that the petitioner need not be reinstated.

The judgment of this Court dated 06.09.2010 attained finality.

In the meanwhile, the petitioner's trial progressed in which through judgment dated 30.10.2009, the Special Judge, Jind (for short – the Trial Court) acquitted the petitioner after holding that the prosecution had miserably failed to prove its case against him.

The judgment of the Trial Court dated 30.10.2009 also attained finality.

In terms of the liberty granted by this Court through its aforesaid judgment dated 06.09.2010, the petitioner was served a charge-sheet dated 24.12.2010 as per which, to falsely implicate an unknown

person, the petitioner alongwith EHC Rattan Singh, was alleged to have taken bribe from two journalists; such act on his part had been videographed and telecast on the Star News Channel and that in this regard FIR No.123 dated 19.06.2008 under Sections 7, 13 and 49 of the PC Act had also been registered against him.

After considering the evidence led before him, the enquiry officer submitted his report dated 04.01.2011 to the SP, who was the petitioner's disciplinary authority. As per the enquiry report the charges against the petitioner were not proved but since his photograph was visible in the Compact Disc of the sting operation (for short – the CD), the enquiry officer was of the view that the petitioner's involvement in the incident could not be denied and therefore, held the petitioner guilty. Relying on the finding of guilt returned by the enquiry officer, the SP issued notice to the petitioner as to why he be not dismissed from service and after considering the petitioner's reply, through order dated 15.02.2011, punished him by compulsorily retiring him from service. The punishment awarded by the SP was challenged by the petitioner by way of an appeal. The Inspector General of Police, Hisar Range (for short – the IG), who was the petitioner's Appellate Authority, was of the view that under Rule 9.18(2) of the Punjab Police Rules, 1934 (for short – the Rules), the SP had no authority to compulsorily retire the petitioner. Therefore, exercising the powers of review under Rule 16.28 of the Rules, the IG himself went on to substitute the petitioner's punishment. Since during the pendency of his appeal the petitioner had superannuated, through his order dated 12.12.2012, the IG modified the petitioner's punishment to a 25% cut in his pension. The petitioner assailed the order of the IG through a revision petition which was

dismissed by the Director General of Police, Haryana (for short – the DGP) on 18.01.2016. It is in these circumstances that the petitioner knocked the doors of this Court through the instant petition seeking therein quashing of the afore referred orders passed by the SP, IG and DGP.

Learned counsel for the petitioner submitted that on the same set of facts the petitioner was involved in a criminal case as also subjected to a regular departmental enquiry; through judgment dated 30.10.2009, the Trial Court had honourably acquitted the petitioner; such judgment of the Trial Court had attained finality; in the judgment passed by the Trial Court it had specifically been held that the prosecution has miserably failed to prove the sting operation, which was the basis for launching of criminal as also the departmental proceedings; the enquiry officer, in his report dated 04.01.2011 had also returned a specific finding that none of the charges against the petitioner had been proved; in spite of the same the enquiry officer went on to hold that because the petitioner was visible in the CD his involvement in the sting operation could not be denied and therefore held him guilty; the finding of guilt returned by the enquiry officer was not based on any evidence; such finding of guilt could not have been returned on the basis of suspicion especially after the enquiry officer had held that the charges against the petitioner had not been proved; even otherwise, the finding of guilt of the petitioner by the enquiry officer was solely based on viewing of the CD which according to the enquiry officer himself was edited and therefore, no reliance on the CD could have been placed.

Per contra, learned State counsel submits that the enquiry officer had specifically returned a finding with regard to the petitioner's guilt which was based on evidence led before him; as per the law settled by

the Supreme Court, this Court should not sit in appeal over such findings and that this Court could interfere with the findings returned by an enquiry officer only if there was any procedural lapse or violation of a rule/ law which in the case in hand was not there.

Learned counsel for the parties have been heard and with their able assistance the record of the case has been perused.

In Union of India vs. H.C. Goel, (1964) 4 SCR 718, one of the questions before a Constitution Bench of the Supreme Court was whether the High Court while dealing with a writ petition filed by an official who had been dismissed from service was entitled to arrive at a conclusion that the decision of the Government to dismiss the official was not supported by any evidence. While answering the question in the affirmative the Supreme Court concluded that while exercising its jurisdiction under Article 226 of the Constitution of India the High Court cannot consider the question about the sufficiency or adequacy of evidence relied upon by the enquiry officer to arrive at a particular conclusion as that is a matter which is within the exclusive competence of the authority which deals with such question. However, the High Court can and must enquire whether there was any evidence in support of the impugned conclusion drawn by such authority. The High Court could take the entire evidence as it stands and only examine whether on that evidence the impugned conclusion could have been made. The Supreme Court further held that even in domestic enquiries suspicion could not be allowed to take the place of proof and thus become the basis for returning a finding of guilt. Paragraph Nos.23 and 27 of the judgment which are relevant are reproduced below:-

23. That takes us to the merits of the respondent's contention that the conclusion of the appellant that the third charge

framed against the respondent had been proved, is based on no evidence. The learned Attorney-General has stressed before us that in dealing with this question, we ought to bear in mind the fact that the appellant is acting with the determination to root out corruption, and so, if it is shown that the view taken by the appellant is a reasonably possible view this Court should not sit in appeal over that decision and seek to decide whether this Court would have taken the same view or not. This contention is no doubt absolutely sound. The only test which we can legitimately apply in dealing with this part of the respondent's case is, is there any evidence on which a finding can be made against the respondent that Charge No. 3 was proved against him? In exercising its jurisdiction under Article 226 on such a plea, the High Court cannot consider the question about the sufficiency or adequacy of evidence in support of a particular conclusion. That is a matter which is within the competence of the authority which deals with the question; but the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence illegally the impugned conclusion follows or not. Applying this test, we are inclined to hold that the respondent's grievance is well founded, because, in our opinion, the finding which is implicit is the appellant's order dismissing the respondent that charge number 3 is proved against him is based on no evidence.

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27. Now, in this state of the evidence, how can it be said that the respondent even attempted to offer a bribe to Mr Rajagopalan? Mr Rajagopalan makes a definite statement that the respondent did not offer him a bribe. He merely refers to the fact that the respondent took out a paper from his wallet

and the said paper appeared to him like a hundred rupee note double folded. Undoubtedly, Mr Rajagopalan suspected the respondent's conduct, and so, made a report immediately. But the suspicion entertained by Mr Rajagopalan cannot, in law, be treated as evidence against the respondent even though there is no doubt that Mr Rajagopalan is a straight-forward and an honest officer. Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquires held under the statutory rules. We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the learned Attorney-General, but we are unable to hold that on the record, there is any evidence which can sustain the finding of the appellant that charge No. 3 has been proved against the respondent. It is in this connection and only incidentally that it may be relevant to add that the UPSC considered the matter twice and came to the firm decision that the main charge against the respondent had not been established.

In Nand Kishore Prasad vs. State of Bihar and others, (1978) 3 Supreme Court Cases 366, the Supreme Court held that the disciplinary proceedings were quasi judicial in character. Therefore, the conclusions drawn in a domestic enquiry should be based only on the evidence on the record as also on some degree of definiteness. It was further opined that in domestic enquiries suspicion should not be allowed to take place of proofs.

Paragraph 19 of the judgment where such opinion has been expressed reads

as under:-

“19. Before dealing with the contentions canvassed, we may remind ourselves of the principles, in point, crystallised by judicial decisions. The first of these principles is that disciplinary proceedings before a domestic tribunal are of a quasi-judicial character; therefore, the minimum requirement of the rules of natural justice is that the tribunal should arrive at its conclusion on the basis of some evidence, i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take the place of proof even in domestic inquiries. As pointed out by this Court in Union of India v. H.C. Goel, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules.”

In Roop Singh Negi vs. Punjab National Bank and others, (2009) 2 Supreme Court Cases 570 the Supreme Court held that even in domestic enquiries suspicion, under no circumstance could be held to be a substitute for legal proof. In this regard reference can be made to paragraph 23 of the judgment which reads as under:-

“23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be

applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.”

In Union of India vs. Naman Singh Shekhawat, (2008) 4 Supreme Court Cases 1, the Supreme Court expressed an opinion that if in a departmental enquiry the decision is based on no evidence then such decision was unsustainable and could be interfered with by the High Court in its writ jurisdiction.

Similar view has been taken by the Supreme Court in Narinder Mohan Arya vs. United India Insurance Co. Ltd. And others, (2006) 4 Supreme Court Cases 713 wherein it has been held that in a domestic enquiry the enquiry officer cannot base its conclusion on mere hypothesis.

Thus, while exercising its writ jurisdiction, the High Court cannot and should not consider the question about the adequacy of evidence relied upon by an enquiry officer to arrive at a particular conclusion. Sifting of evidence is to be avoided. However, since disciplinary proceedings are quasi criminal in character the High Court, after taking the entire evidence as it is, would be well within its rights to examine as to whether the final conclusion arrived at by the enquiry officer is based on some evidence and not on inferences drawn by him which are not supported by any evidence. If not, such conclusion would be unsustainable. If the enquiry officer is found to have based his conclusions on hypothesis or suspicion even then the High Court could and should interfere with such conclusion.

In the light of the afore discussion it is now to be determined as to whether the enquiry report in the case in hand is required to be interfered with.

Before adverting to the enquiry report it would be useful to refer to the petitioner's charge sheet. The same reads as under:-

"I Surender Singh Malik, HPS, Deputy Superintendent of Police, Narwana charge sheets you on the basis of documentary evidence and prosecution evidence on this departmental file that when in June 2008 you were posted as an Investigating Officer in Police Station City Narwana, you, in collusion with Ex. EHC Rattan Singh 984/Jind have demanded money and have taken some money from Jamshed Bahadur Khan s/o Sh. F.A. Khan Sayeed Masroor Hasan Reporter Star News Channel and Sh. Sushant Pathak Star News, Sector-37, Head Office Noida to implicate some unknown person in a false case of NDPS Act or in a false case of some women. Upon this a video was prepared against you and Ex. EHC Rattan Singh 984/Jind in sting operation and it was telecast on channel Star News dated 18.06.2008 and 19.06.2008. Upon this you were dismissed on 19.06.2008 and Sh.Ashok Kumar, Deputy Superintendent of Police, Detective Jind got a case No.123 dated 19.06.2008 under section 7/10-49-88 PC Act registered at Police Station City Narwana and you were arrested in the above case on 23.07.2008 and challan was prepared on 07.08.2008 and presented in the Court on 29.08.2010 and you were acquitted from the Hon'ble Court on 30.10.2009. Prior to this also punishment of censure was given to you on account of not arresting the bail jumpers and these allegations have been endorsed by prosecution witness No.2, prosecution witness No.4, prosecution witness No.5, 6 & 7.

In this way you while in disciplined police department have demanded money and taken some money from Reporters

of Star News Channel to implicate some unknown person in a false case of NDPS Act or in a false case of some women. Upon this case No.123 dated 19.06.2008 under section 7/10-49-88 PC Act Police Station City Narwana was registered. You have not only violated the law by demanding money and taking bribe, you have also shown grave indiscipline and negligence. Due to this the image of police department has been let down. This act of your is contrary to police rules and is punishable.”

Thus, the charge against the petitioner was that in June 2008, when he was posted in Police Station City Narwana, to implicate some unknown person in a false case, he had demanded and taken money from Jamshed Bahadur Khan and Sushant Pathak which act on his part was also videographed and telecast.

On the basis of the afore reproduced charge sheet a regular departmental enquiry was held against the petitioner. After conclusion of the enquiry the enquiry officer submitted his report dated 04.01.2011 to the SP who was the petitioner's disciplinary authority. The relevant portion of the enquiry report is reproduced below:-

“It is correct that on the date of the sting operation, which was shown as the date of the incident, the delinquent Ex. ASI Ishwar Singh 200/H was not present in the Police Station City Narwana and/ or in Narwana City and that he had gone to Ujjain for serving the warrant of the complainant namely Pooja Devi in a case/ FIR bearing No.72/06 under Sections 363/ 366/ 120B Indian Penal Code, Police Station City Narwana, which was issued by the learned Sessions Court, Jind, but the 'photo' in the CD of the sting operation is doubtful. If the delinquent was not present in Narwana City then from where did the 'photo' in the CD of the sting operation come from and this fact has not been clarified anywhere in the

departmental inquiry as to from where the 'photo' in the CD of the sting operation came from. Similarly delinquent Ex. EHC Ratan Singh 984/ Jind has also written about going to Hisar with SDJM Shri Sanjeev Arya on the day of the incident, but his 'photo' was also shown taking money. It was only after the photographs of the delinquents were shown in the sting operation that the case/ FIR against the delinquents was registered, and this departmental inquiry is being conducted. In the CD of this sting operation, delinquent Ex.EHC Ratan Singh 984/ Jind was shown taking money, and the 'photo' of delinquent Ex.ASI Ishwar Singh 200/H was also shown but he was not shown taking money etc. On the other hand, the learned Trial Court Special Court, Jind has also accepted the point that the delinquent Ex.ASI Ishwar Singh 200/H had gone to Ujjain for serving the warrant. The decision given by the learned trial Court on 30.10.2009 has also been carefully perused and the learned Court, while observing that delinquent Ex.ASI Ishwar Singh 200/H had gone to Ujjain and because of the failure of the prosecution to prove the allegations/ charges, [the delinquent(s)] were acquitted in case/FIR No.123 dated 19.06.2008 under Section 7/13-49-88 P.C. Act, Police Station City Narwana; on the basis of the above-mentioned case/FIR, this departmental inquiry has been conducted; the facts related to the above-mentioned case/ FIR have come to the fore in this departmental inquiry also; and the factum of going to Ujjain from 22.05.2008 to 28.05.2008 has been found to be correct and the prosecution has failed to prove the charges, but the visual of the 'photo' in the C.D. of sting operation is doubtful, and it is because of this 'photo' that the delinquents Ex.ASI Ishwar Singh 200/H and Ex.EHC Ratan Singh 984/Jind are found to be involved in this sting operation; a 'photo' of Sh. Joginder Singh, Former Director, C.B.I. has also been shown in this C.D., and it also shows a man being beaten up; that this C.D. is stated to be 'mixed'. Although according to the facts found during this departmental inquiry and in view of the facts

written/ mentioned in the decision dated 30.10.2009 in connection with case/ FIR No.123 dated 19.06.2008 under Section 7/13-49-88 P.C. Act, Police Station City Narwana, no charge/ allegation is proved against the delinquents; non-fulfillment of the ingredients of the P.C. Act has also been the main factor in the acquittal of the delinquents. But from the visual of the 'photo' shown in the C.D. of the sting operation, the presence of both the delinquents in the 'sting operation incident' cannot be ruled out.

Therefore, I, Surendra Singh H.P.S. Deputy Superintendent of Police, Narwana hold Ex.ASI Ishwar Singh 200/H and Ex.EHC Ratan Singh 984/ Jind to be guilty.”
(emphasis supplied)

The charge against the petitioner was of having demanded and received money to falsely implicate an unknown person. As per the enquiry report there was no evidence in this regard and therefore, the charge was not proved. Once the enquiry officer had arrived at such conclusion his role came to an end and that he should have left the matter then and there. Thereafter, on consideration of the enquiry report it was upto the disciplinary authority to either accept the findings of the enquiry officer or to differ with it. However, after the enquiry officer concluded that the charge against the petitioner was not proved he went on to hold the petitioner guilty. Such a contradiction within the same enquiry report is irreconcilable. Even otherwise, as per the enquiry report, the finding of guilt has been returned only because visuals of the petitioner could be seen in the CD which the enquiry officer himself describes to be doctored or edited as the same was also found to contain visual clips which were absolutely unrelated to the event which was being inquired into. Further, in the earlier part of his report, the enquiry officer had returned a definite

finding that the CD did not contain any coverage in which the petitioner was seen demanding or accepting any bribe and that on the day when the petitioner is alleged to have demanded and accepted bribe in Narwana (Haryana) it was proved that he was hundreds of kilometers away in Ujjain (Madhya Pradesh).

In the light of the afore discussion, this Court has no hesitation to conclude that the finding of guilt of the petitioner by the enquiry officer was based on no evidence and on his ipse dixit as also surmises and conjectures. The same cannot be sustained. Therefore, this Court would be failing in its duty by not only interfering with such a finding but also setting it aside and it is so ordered. Since, the impugned orders passed by the SP, the IG and the DGP are admittedly based solely on the afore finding of guilt by the enquiry officer, as a necessary corollary, such orders would also be unsustainable and accordingly, they too are set aside.

The petition is allowed in the above terms.

No costs.

23.12.2022
gk

(Deepak Sibal)
Judge

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