

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

CWP No. 2512 of 2017 (O&M)

Date of Decision: April 29, 2022

Ravinder Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Ms. Shivya Sehgal, Advocate
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

JAISHREE THAKUR, J.

1. The petitioner has filed the instant writ petition against the order dated 22.1.2009, whereby the Senior Superintendent of Police, Ludhiana, has accorded a punishment of forfeiture of 3 years service for the purpose of increment on permanent basis and order dated 12.01.2010, by which punishment was enhanced and order dated 22.12.2015 as passed by respondent No. 2, vide which the appeal preferred by the petitioner stood dismissed.

2. In brief, the facts as stated are, that the petitioner was issued show cause notice informing him that a departmental inquiry is being initiated on the basis of a complaint of the Deputy Superintendent of Police, Ludhiana Region Ludhiana. This departmental inquiry came to be initiated on account of an FIR No. 37 dated 12.2.2008 under Sections 223, 224, 120-B IPC, which was registered against the petitioner at Police Station Model Town, Ludhiana, on the allegation that on account of negligence of the

petitioner and one Head Constable Ranjit Singh, under trial Vikram escaped the custody. The petitioner along with Head Constable Ranjit Singh had taken under trial Vikram from Central Jail, Ludhiana, for attending the Bhog ceremony of his mother, but he succeeded in escaping. Based on the complaint, a departmental inquiry was initiated and a show cause notice was issued. In the departmental inquiry, it was found that the petitioner was negligent, and punishment of forfeiture of 3 years service for the purpose of increment was imposed. The petitioner preferred a revision petition against the order, but the revisional authority increased the punishment of forfeiture of three years service to forfeiture of 5 years service for the purpose of increment. In the meanwhile, the petitioner was acquitted in the criminal case registered against him and the petitioner preferred an appeal against the order, which too was dismissed.

3. Ms. Shivya Sehgal, learned counsel appearing on behalf of the petitioner, submits that the impugned orders are liable to be set-aside on the ground of non application of mind since the same are cryptic in nature without any reasoning being given. It is argued that the punishment imposed by the impugned order dated 12.01.2010 has been enhanced suo *moto* by the revisional authority and the same is unsustainable since the department did not file any appeal against the said order. It is also submitted that there is non-compliance of Rule 16.38 of the Punjab Police Rules (“**the PPR**” for short), as the punishment has been imposed on the ground of negligence in performing his duty, without informing the District Magistrate of any complaint received, which indicates the commission of an offence in connection with his official relations with the public.

4. Per contra, Ms. Ambika Bedi learned AAG Punjab, submits that the petitioner was given adequate opportunity of hearing in the departmental inquiry, before the impugned orders were passed. It is submitted that the departmental inquiry was initiated when an under trial prisoner escaped from the police custody of the petitioner and the Head Constable Ranjit Singh. The prisoner was not handcuffed when he was taken to attend the Bhog ceremony of his mother. It is contended that the departmental proceedings are independent of the criminal proceedings and the acquittal of the petitioner will have no bearing on the inquiry.

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

6. An argument has been raised that there is non compliance of Rule 16.38 of the Rules of the PPR as departmental inquiry was initiated without complying with the procedure as prescribed under the said Rules. This argument is without any basis as this plea was not taken up at the time when the petitioner was served with a copy of the charge sheet and was asked to file reply thereto. It is also worthwhile to note that this plea was not taken up at the time when the revision was filed. Moreover, in the present writ petition there is no averment to the effect that the departmental inquiry stands vitiated on the ground that there is non compliance of Rule 16.38 of the PPR as no prior sanction had been taken from the District Magistrate, as provided under the Rules. At this stage the argument would not be sustainable.

7. The petitioner participated in the departmental inquiry and on account of his negligence, punishment of forfeiture of 3 years service for the

purpose of increment was imposed. In the revision filed by the petitioner against the said order, the punishment was enhanced by taking into account the entire evidence on the record. The petitioner who had been charged with negligence while on duty in allowing the under trial to escape was found guilty of conspiracy with the under trial and his wife. The petitioner through his Mobile No. 98728-05134 talked to the wife of the under trial, namely Vandana, on her mobile on 11.2.2008. Apart from that, he talked to her 17 times on 12.2.2008 between 8.12 a.m. to 9.25 p.m. On 13.2.2008, 14.2.2008 and 16.2.2008 also, the petitioner talked to the wife of the under trial at different times. The Inspector General of Police, Jalandhar, before whom the revision had been filed, came to the conclusion that the petitioner herein had managed to get himself assigned to the job of taking the under trial out of the Central Jail. An opinion was formed that there was no reason for the petitioner to talk on the mobile phone of the wife of the under trial. Therefore, the Inspector General of Police, while exercising the power to review under Section 16.28 of the PPR, issued notice dated 9.9.2009 as to why the petitioner be not dismissed from service. An opportunity was given to the petitioner to show cause as to why his punishment should not be enhanced to dismissal. Reply was filed and an opportunity of personal hearing was also given. Before the revisional authority, the petitioner herein pleaded for leniency submitting that he belongs to a poor family. Therefore taking lenient view, the Inspector General of Police, instead of passing the order of dismissal, as proposed in the show cause notice, awarded punishment of forfeiture of 5 years of service for the purpose of increment.

8. One principle of law which is now well settled is that the

Courts ordinarily do not enjoy jurisdiction to alter the quantum of punishment inflicted by the employer on its employee. In a recent Judgment the Supreme Court In **Union of India Vs Managobinda Samantaray** Civil Appeal Nos.1622-1623 of 2022 (SLP (C) No(s). 18110-18111/2018 has held that *“Quantum of punishment is within the discretionary domain and the sole power of the decision-making authority once the charge of misconduct stands proved. Such discretionary power is exposed to judicial interference if exercised in a manner which is grossly disproportionate to the fault, as the constitutional courts while exercising the power of judicial review do not assume the role of the appellate authority. Writ jurisdiction is circumscribed by limits of correcting errors of law, procedural error leading to manifest injustice or violation of principles of natural justice.”*

In the case of **B.C Chaturvedi v. Union of India & Ors. (1995) 6 SCC 749** the Supreme Court has 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.”

What can be culled out is that the Court is to examine as to whether an inquiry was held by a competent officer or whether rules of natural justice are complied with. In the instant case, proper procedure has been followed and rules of natural justice have been complied with. The Inspector General of Police issued a show cause notice for dismissal under Rule 16.28 of PPR looking into the gravity of the offence i.e allowing an under trial to escape in conspiracy with the under trial's wife and after giving a personal hearing took a lenient view and imposed a punishment of forfeiture of 5 years service for the purpose of increment.

9. Consequently, finding no merit in the writ petition the same is being dismissed.

April 29, 2022
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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned : Yes
Whether Reportable : No