

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

CWP-29349-2017 (O&M)

Date of decision: September 12, 2022

Ved Parkash

.....Petitioner

versus

Additional Chief Secretary-cum-Financial Commissioner, Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Ramesh Hooda, Advocate for the petitioner.

Mr. Saurabh Mohunta, DAG Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of Certiorari for quashing orders dated 21.11.2014 (Annexure P-6) passed by respondent No.3 whereby petitioner has been ordered to be dismissed from government service with immediate effect, order dated 10.07.2015 (Annexure P-7) passed by respondent No.2 rejecting the appeal preferred by the petitioner, and order dated 20.07.2017 (Annexure P-8) passed by respondent No.1 whereby second appeal against the orders dated 21.11.2014 and 10.07.2015 was rejected; further direction is sought to reinstate his services with all consequential benefits.

2. Pledged case is that petitioner was appointed as Patwari in the revenue Department on 09.07.1997. Throughout service, his ACRs were good or very good with no adverse entry communicated to him. While he was posted in the branch of the District Revenue Officer, Rohtak, a complaint dated 28.03.2011 (Annexure P-1) was filed by four villagers of Village Brahman *inter*

alia stating that in respect of compensation on account of acquisition of their land for NH71A Bypass, for which award was passed by the Collector, petitioner asked 25 paisa commission out of one rupee and threatened that if the amount is not paid then DRO will send their amount under Section 30 and amount will remain equal to 50 paisa. No action was taken against DRO rather show cause notice was issued only against the petitioner. Petitioner filed his reply, but punishing authority finding the reply unsatisfactory, suspended him from service. City Magistrate, Rohtak was appointed as enquiry officer under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987. The petitioner denied allegations. Enquiry officer submitted report dated 22.11.2011 (Annexure P-2) in favour of the petitioner, but respondent No.3 ordered to get the voice of the recorded tape examined from FSL Madhuban. It was reported by FSL Madhuban that CD is in Haryanvi language and it is difficult to understand it and asked to send translated copy of the same in Hindi language. On the asking of respondent No.3, voice sample of petitioner was taken and then was examined by the FSL Madhuban. It was opined by FSL Madhuban that voice is similar to the voice recorded in the CD and on the basis thereof, charge against the petitioner was proved. Consequently, petitioner was given show-cause notice. Petitioner replied to the same and appeared before respondent No.3 as well. Respondent No.3 passed impugned order dated 21.11.2014 (Annexure P-6) dismissing the petitioner from service. Petitioner filed appeal, which was also rejected vide order dated 10.07.2015 (Annexure P-7) by respondent No.2. Petitioner filed second appeal before respondent No.1, which too was rejected vide order dated 20.07.2017 (Annexure P-8). Hence, the present petition.

3. I have heard rival contentions of learned counsel for the parties and perused the record.

4. Arguments of learned counsel for the petitioner substantially are that there has been a complete violation of principles of natural justice, inasmuch as, enquiry report comprised of three parts as the Enquiry Officer was appointed by designation of City Magistrate and due to the change of the incumbent, enquiry was conducted at different stages by three different City Magistrates and same comprised of two unfinished enquiry reports i.e. report dated 22.11.2011 (Annexure P-2) and report dated 16.03.2012 (Annexure P-3) followed by final report dated 08.03.2013 (Annexure P-4). Learned counsel strenuously argues that petitioner was merely supplied the final enquiry report i.e. report dated 08.03.2013 (Annexure P-4) and earlier enquiry reports wherein statements of the witnesses were recorded and certain evidences were rendered *qua* the same were never supplied to him, and in the absence thereof, petitioner could not properly defend himself before the Punishing Authority followed by the Appellate Authorities. Learned counsel also strenuously argues that procedure as envisaged under the Evidence Act, 1872 (for short 'Act') for compliance of Section 65-B of the Act was not carried out. He also alternatively argues that even if his arguments, as noted above were not accepted, then in the interest of equity and justice, lenient view ought to have been taken, inasmuch as, very harsh and disproportionate punishment has been awarded to him by ordering dismissal from service given that prior thereto for almost 20 years, there has not been a single complaint against the petitioner and he had an unblemished service record.

5. Per contra, learned State counsel submits that petitioner does not deserve any leniency given the unimpeachable findings rendered by the Enquiry

Officer which are in-turn on the basis of FSL report of comparison of voice sample of the petitioner with the recordings made by the complainants on their mobile phones and submitted to the District Collector, which showed that the petitioner had directly demanded bribe from them failing which they will not be disbursed the legitimate compensation *qua* the land acquired by the State Government, of which they were the owners. As regards the violation of procedure, if any, same is also completely unsubstantiated as would be borne out from the record, which he referred in course of hearing.

6. I shall now proceed to render my opinion on the competing arguments, as noted hereinabove.

7. The first argument appears to be quite belated at this stage as is borne out from the record. The petitioner did not take any steps at any stage by either writing a letter or submitting representation or even otherwise making assertion in the disciplinary proceedings that he has not been supplied with the reports contained at Annexures P-2 and P-3, which were rendered by the predecessors of the final enquiry officer. Not only that, while presenting his case before the Punishing Authority, no such ground was taken that he has not been supplied with the copy thereof followed by the same position even before the Appellate Authorities. It transpires that petitioner became wiser only for the first time, when he filed the present petition that such a defence was to be taken. In any case, such defence now taken flies in the face of recitals in Annexure P-4, which concededly was supplied to him being final enquiry report dated 08.03.2013. The relevant recitals are as below:-

“In this regard, the earlier officers have already submitted two reports dated 22.11.2011 (Enclosure-A) and dated 16.03.2012 (Enclosure B).”

There are thus specific recital of the earlier two reports of the City Magistrates being the enclosures of the final enquiry report. Therefore, petitioner cannot take a volte face that said enclosures were not supplied particularly when the same formed part of the final report as Enclosures – A and B, as noted hereinabove. On that short ground alone, I do not accept the argument, as canvassed by the learned counsel for the petitioner that there has been a violation of principles of natural justice.

8. The next argument with regard to not following the mandate of Section 65-B of the Act, in order to appreciate the same, the said Section is extracted herein below:-

“65-B. Admissibility of electronic records. – (1) *Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this Section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely—

- (a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;*
- (b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;*
- (c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and*

(d) *the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.*

(3) *Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—*

- (a) *by a combination of computers operating over that period; or*
- (b) *by different computers operating in succession over that period; or*
- (c) *by different combinations of computers operating in succession over that period; or*
- (d) *in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,*

all the computers used for that purpose during that period shall be treated for the purposes of this Section as constituting a single computer; and references in the Section to a computer shall be construed accordingly.

(4) *In any proceedings where it is desired to give a statement in evidence by virtue of this Section, a certificate doing any of the following things, that is to say—*

- (a) *identifying the electronic record containing the statement and describing the manner in which it was produced;*
- (b) *giving such particulars of any device involved in the production of that electronic record, as may be appropriate for the purpose of showing that the electronic record was produced by a computer;*
- (c) *dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,*

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) *For the purposes of this Section,—*

- (a) *information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;*
- (b) *whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of*

- those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;*
- (c) *a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.”*

9. Perusal of the above Section would reveal that requirement of a Certificate is in those cases where any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer. The original recordings are the primary evidence and admissible without any such certificate. Their contents are acceptable as correct being electronic in nature unless proved otherwise in discharge of the shifting of the onus on one against whom the same are to be used. Instant is not a case of any such kind. However, argument of learned counsel for the petitioner, even if were to be accepted on the ground that primary piece of evidence i.e. mobile phone was not sent for laboratory verification, it does not help him in the sense that said protection is more for the benefit of the prosecution. Reasons are not far to see. During electronic transmission at different stages, it so happens that each time there is certain loss in transmission which leads to the poor quality of the voice which is required to be lab tested and naturally results in erroneous conclusions including mismatch of the voice and the benefit thereof necessarily is given to the delinquent. It is in such situation, in order to avoid any benefit of doubt, it is rather imperative to send primary evidence for testing in the laboratory. Instant is a case where voice was recorded by way of transmitting it from the mobile phone to the CD, which was sent for laboratory verification and despite the transmission, unimpeachable finding has been rendered that voice samples have matched since subsequently petitioner himself was asked to give his voice sample. Being so, I am of the

view that in case of primary evidence which the petitioner had given, petitioner cannot have had any doubt of the same being not sent, as it would have resulted in the same finding by the laboratory. As regards the procedure followed by the Punishing Authority, I do not find that there is any irregularity of the kind which warrants interference by this Court. Matters of bribe affect the Society in whole and have to be dealt with seriously and with iron hands so as not to give wrong signal to others to indulge in that. Therefore, as a deterrent for others, it is required that exemplary punishments should be meted out in such cases and therefore, petitioner does not deserve any leniency even if he has an unblemished service record in the past.

10. In the totality of circumstances, no grounds for interference, on either score, are made out.

11. Dismissed.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

September 12, 2022

mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No