

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

222

**CM-1564-LPA-2021 in/and
LPA No.1734 of 2019**

Date of decision: 14.02.2022

Union of India & others

... Appellants

Versus

Bajinder Singh

... Respondent

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Mr.Namit Kumar, Advocate, for the applicant-appellants.

Mr.Amit Jhanji, Senior Advocate
with Mr.Abhishek K.Premi, Advocate, for the respondent.

G.S. Sandhawalia, J.

CM-1564-LPA-2021

Application for preponement of date of hearing of the appeal
from 21.08.2021 has been rendered infructuous and the same is disposed
of, as such.

LPA-1734-2019

The present Letters Patent Appeal, filed by the Union of India, is directed against the impugned judgment passed on 11.04.2019 by the Learned Single Judge in CWP-8679-2011, filed by the writ petitioner, respondent herein, whereby the enquiry report dated 05.03.1999 (Annexure P-5) and the order of termination from service dated 03.04.1999 (Annexure P-7) had been set aside. Similarly, the Appellate/Revisional orders dated 25.06.1999 (Annexure P-9) and dated 09.02.2011 (Annexure P-14) were also set aside.

The said view was taken on the ground that the Enquiry Officer had taken on the role of Presenting Officer and therefore, lost his capacity as an independent adjudicator. However, liberty was not granted to the appellants herein to proceed further on the ground that the

petitioner had since retired long ago and therefore, the benefits of illegalities committed by the respondents must enure to the benefit of the employee and not to the employer. The prayer to proceed afresh against the petitioner was rejected.

The application for modification of the said order and for liberty to proceed afresh was also filed primarily on the ground that the writ petitioner would have continued in service upto 58 years and therefore, would have been in service at the time of passing of the order dated 11.04.2019 (Annexure P-4). The said application was also dismissed on 28.08.2019.

It is the case of the appellants herein also, even in the grounds of appeal, that as the age of retirement is 60 years and the year of birth of the writ petitioner is 1964 therefore, it is submitted that he would retire in the year 2024 and therefore the reasoning was against the record.

Counsel for the appellants submits that the Learned Single Judge has relied upon the judgment in **Union of India & others Vs. Ram Lakhan Sharma 2018 (3) SCT 538** to allow the writ petition. It is further pointed out that Rule 27 of the Central Reserve Police Force Rules, 1955 was subject matter of consideration which is also applicable in the present case. The Apex Court came to the conclusion that though the statutory rules does not contemplate appointment of a Presenting Officer but it is to be seen whether it is a question of fact and whether the Enquiry Officer has acted as a prosecutor and Judge in the said disciplinary enquiry. It is submitted that even in the said case, the Learned Single Judge had directed that the proceedings would start afresh

from the stage of appointment of a Presenting Officer and if departmental proceedings are required to be started afresh, the respondent shall be placed under suspension and during the period of suspension, subsistence allowance could be paid. It was left to the wisdom of the authorities to decide on the arrears of pay and allowances which order had been approved by the Apex Court. It is thus submitted that the said leave has not been granted in the present case.

Learned Senior Counsel for the writ petitioner/respondent herein, on the other hand, has argued that a period of almost 23 years has elapsed since the order of dismissal was passed and a quietus should be given to the same and it would be highly unequitable to start departmental proceedings afresh while relying upon **Union of India Vs. I.S.Singh 1994 SCC Supl. (2) 518**.

A perusal of the paperbook would however go on to show that the incident on which the enquiry proceedings are initiated took place on 13.01.1999. The two articles which are subject matter of the departmental proceedings, as per the charge-sheet served upon the writ petitioner on 16.01.1999, read as under:

“Article-I

That said No.850862761 LNK (GD) Bajinder Singh on 13.1.1999 while functioning as LNK (GD) in GC CRPF Jalandhar committed as act of disobedience of orders in his capacity as a member of the force under section 11(1) of the CRPF act, 1949 in that he did not obey the lawful orders of his superior officers and misbehaved with them.

Article-II

That said No.850862761 LNK (GD) Bajinder Singh, while functioning as LNK (GD) in GC CRPF Jalandhar committed

as act of misconduct in his capacity as a member of the force under section 11(1) of the CRPF act, 1949 in that he threatened to kill SI (Adj.) on 13.1.1999 with his service weapon.”

On the basis of the said charges, the explanation was called for, which was given on 26.01.1999 (Annexure P-2). It is noticeable that apparently the marriage of writ petitioner's brother's daughter had been fixed and he had given an application for 30 days of earned leave but the same was not being processed and rather he was being sent to undergo a course. However, the explanation given was not accepted and his request for appointment of Legal Assistant was also rejected on 10.02.1999 (Annexure P-4). Resultantly, the dismissal order was passed on 03.04.1999 (Annexure P-7) and the appeal was also dismissed on 25.06.1999 (Annexure P-9).

Since the writ petitioner was a resident of the State of Uttar Pradesh, he approached the High Court at Allahabad in the year 1999 by way of filing a writ petition, which was dismissed after 9 years on 16.02.2009 (Annexure P-10) on the ground of territorial jurisdiction. Thereafter, he approached this Court and initially his writ petition bearing CWP-11119-2009 was allowed on 26.02.2010 (Annexure P-11) but the said order is stated to have been reviewed and eventually the writ petition was dismissed with liberty to avail his statutory revisional remedy on 08.10.2010 (Annexure P-12). Eventually, the revision was dismissed on 09.02.2011 (Annexure P-14) which led to filing of CWP-8433-2011. Said writ petition was dismissed as withdrawn and thereafter, CWP-8679-2011 had been filed which has now been allowed vide the

impugned order dated 11.04.2019.

Counsel for Union of India is justified in that manner to submit that it was on account of approaching the wrong Court by the petitioner, the matter got delayed for over a period of 10 years. Therefore, the plea that a quietus should be given to the matter, is not liable to be accepted. It has also rightly been contended that in view of the allegations made which are grave and since the petitioner belonged to a Member of Disciplined Force, the departmental proceedings should not have been allowed to come to an end in view of the law laid down in **Anant R.Kulkarni Vs. Y.P. Education Society & others (2013) 6 SCC 515**.

In the considered opinion of this Court the sequence of events would go on to show that the suspension order was passed on the next day on 14.01.1999 and the charge-sheet was issued 2 days later, on 16.01.1999. The explanation dated 26.01.1999 of a marriage in the family and leave application not being processed was never considered. The request for legal assistance was dismissed on 10.02.1999. Within a period of less than one month, the Enquiry Officer submitted an adverse report on 05.03.1999 and eventually the dismissal order was passed on 03.04.1999. It is apparent that the Learned Single Judge was justified in coming to the conclusion that the judgment in Ram Lakhan Sharma (supra) would be directly applicable to the facts and circumstances as the sequence of events would show that the enquiry officer had acted as a prosecutor and no fault could be found with this aspect.

Apparently, the adage-'Justice hurried is justice buried' would apply to the facts and circumstances and the manner the appellants

have acted. However, counsel for the Union of India is justified to that extent that the disciplinary proceedings should be allowed to continue and accordingly, the judgment of the Learned Single Judge dated 11.04.2019 is modified to that extent.

The present appeal is, accordingly, partly allowed and following directions are passed:

- (i) Liberty is given to the Union of India to proceed ahead with the departmental proceedings. However, the same be concluded within a period of 3 months from today.
- (ii) Since the dismissal order has been set aside, the competent authority shall pass a fresh order, within a period of 2 months as to the subsistence allowance which is to be paid till the conclusion of the departmental proceedings since the petitioner was placed under suspension on 14.01.1999. The arrears of the amount for the period from 14.01.1999 till the decision shall then be disbursed within a period of 1 month thereafter since considerable time has gone by and the petitioner has been fighting for his legal redressal for over 2 decades.

(G.S. SANDHAWALIA)
JUDGE

February 14, 2022
Sailesh

(VIKAS SURI)
JUDGE

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