

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-17610-1996 (O&M)

Reserved on: 22.08.2023

Date of Decision: 20.10.2023

KULDEEP SINGH BADWAL

.....Petitioner

V/s.

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. Lalit Rishi, Advocate,
for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J.

1. The petitioner by way of this Writ Petition challenges the order of punishment of dismissal from service awarded to him vide order dated 29.09.1994 and the order dated 21.06.1996 whereby his Review Petition has been rejected. The petitioner further prays to reinstate him with continuity of service and pay full back-wages.

2. The brief facts, which need to be noticed for the purpose of adjudication of the present case, are that the petitioner is a Doctor who was initially appointed on 01.02.1980 as Incharge, Rural Dispensary (RD) at Chanauli Secondary Health Centre (for short "SHC"). He was transferred as Incharge RD at SHC Sanga Katrala on 11.06.1988, after rendering 8 years of regular service, he was placed in a running grade of ₹3,000/- – ₹4,500/- after eight years of regular service. Vide order dated 30.06.1990, the petitioner was again transferred, but the order of transfer was allegedly not communicated to him. He had made several complaints of the intimidating

behaviour of respondent No.3, whereafter he also filed a criminal complaint against respondent No.3. His Dues had not been paid since long and salary as well as fixation of pay in the running grade, which was although made vide order dated 21.04.1989, yet the petitioner was not given the said benefits.

3. Dr S.S.Khaira, Senior Medical Officer made further complaints against the petitioner and an order was issued on 04.04.1991 to relieve the petitioner from his present place of posting. Directions were also issued on 18.04.1991 to the petitioner to hand over the charge of the dispensary to some other doctor as suggested by respondent No.3. Thereafter, Dr Vijay Kumar was directed to relieve the petitioner on the directions of respondent No.3. One Dr.Sanjiv Heera was also directed by respondent No.1 to join on the post substituting the petitioner. The petitioner could not handover the charge to Dr.Sanjiv Heera in absence of any direction to the petitioner. Whereafter, a charge-sheet under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 was served upon the petitioner containing following four charges:-

Charge No.1:

Unauthorized and Willful absence from duty w.e.f. 16.07.1990;

Charge No.2:

Disobedience and non-compliance of orders of superior Authorities;

Charge No.3:

Causing obstruction to Government servant in discharge of his official duty and;

Charge No.4:

Making false complaints against the superior Officers.

4. The Enquiry Officer submitted his report holding Charges No.1 and 2 stand proved as against the petitioner while Charges No.3 and 4 were not held to be proved. The petitioner submitted his comments to the enquiry report and pointed out that he was not given sufficient opportunity to defend himself. He further submits that the contentions raised by the petitioner were not taken into account and the order was passed on 29.09.1994 dismissing him from service. He filed a Review Petition, but the same was not heard whereafter, he preferred Writ Petition bearing No.CWP-3450-1996, which was disposed of by this Court with direction to pursue the Review Petition. A supplementary review petition was filed by the petitioner, but the reviewing authority rejected the same and upheld the order of dismissal. Thus, the present Writ Petition has been filed with the aforesaid prayers.

5. Learned counsel for the petitioner submits that the enquiry report is wholly flimsy and does not discuss charges No.1 and 2, but holds the petitioner guilty of the same. It is submitted that the enquiry report revolves around charges No.3 and 4 alone and after first discussion, the Enquiry Officer has reached to the conclusion that the petitioner was falsely and wrongfully charged of obstructing a Government servant in discharge of official duty or making any false complaints, but he has reached to the conclusion that the petitioner unauthorizedly continued to perform his duties at the earlier place of posting from where he had already been transferred and had not complied with the transfer orders passed by the higher authorities. Therefore, he was treated to be willfully absent from duty with effect from 16.07.1990 i.e. the date when the petitioner was transferred.

6. Learned counsel for the petitioner submits that the petitioner had been continuously performing his duty in the said SHC-Sanga Katarla and as the transfer of Dr.Sanjiv Heera, was not served upon the petitioner nor he was served with the transfer order or relieving order, he could not handover the charge of the post to Dr.Sanjiv Heera. It has been also submitted that the petitioner was even assigned the Election duties during the period vide order dated 28.01.1992. These documents were placed before the Enquiry Officer who failed to take into notice these documents submitted in defence by the petitioner.

7. Learned counsel for the petitioner submits that while the Enquiry Officer has noticed about several allegations leveled by the petitioner against Dr. S.S. Khaira, Senior Medical Officer posted at PHC, Budhabhar, Tehsil Dasuya, District Hoshiarpur, but the Enquiry Officer has not made any comments in relation to the said aspect.

8. Learned counsel for the petitioner submits that there is a basic element of bias in the entire proceedings resulting in the severest punishment of dismissal from service awarded to the petitioner. He further submits that there is a perversity in the enquiry report as the Enquiry Officer himself has admitted that despite of all the above facts, the petitioner continued to perform at SHC-Sanga Katrala and was running that dispensary. The Enquiry Officer also made the following observations:-

“Going through all the facts mentioned above, as well as perusing the record the undersigned has reached the conclusion that had proper action been taken on his complaints there would have been no occasion to add to their number, and the time and money of the Govt. would not have been wasted. It

is evident from the statement of the village Panchayat as well as the Villagers in the earlier enquiry that the work (service) of Dr. Kuldeep Singh Badwar was quite satisfactory.”

9. I have considered the submissions and find that the disciplinary authority has considered the enquiry report and has failed to take notice that two charges were not proved by the Enquiry Officer and without examining the reply of the petitioner, after noticing the charges leveled, held that the Enquiry Officer concluded that charges have been proved.

10. This Court also finds that the petitioner was attending his duties regularly as per findings of the Enquiry Officer and his work was also found to be satisfactory. Therefore, the findings of the disciplinary authority stating the petitioner having committed willful and unauthorized absence from duty, is found to be based on no evidence.

11. In the case of **Punjab National Bank and Others** Vs. **Kunj Bihari Misra**, 1996 (7) SCC 84, the Hon'ble Supreme Court has held as under:-

“The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the

authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants (supra). While agreeing with the decision in Ram Kishan's case (supra), we are of the opinion that the contrary view expressed in S.S. Koshal and M.C. Saxena's cases (supra) do not lay down the correct law.”

12. Thus, if the disciplinary authority was not agreeing to the findings of the Enquiry Officer, he should have given a disagreement notice to the petitioner pointing out the issues on which the disciplinary authority disagrees with the report of the Enquiry Officer. However, the said aspect was not done.

13. This Court further finds that in spite of directions issued by the appellate authority, the reviewing authority also has failed to take into consideration the same.

14. In the case of **Kuldip Singh** Vs. **State of Punjab and others**, 1996 (10) SCC 659, the Supreme Court held as under:-

“In this sense, if the appellant’s confession is relevant, the fact that it was made to the police or while in the custody of the police may not be of much consequence for the reason that strict rules of Evidence Act do not apply to departmental/disciplinary enquiries. In a departmental enquiry, it would perhaps be permissible for the authorities to prove that the appellant did make such a confession admission during the course of interrogation and it would be for the disciplinary

authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. Here, the authorities say that they were satisfied about the truth of the appellant's confession. There is undoubtedly no other material. There is also the fact that the appellant has been acquitted by the designated court. We must say that the facts of this case did present us with a difficult choice. The fact, however, remains that the High Court has opined that there was enough material before the appropriate authority upon which it could come to a reasonable conclusion that it was not reasonable practicable to hold an enquiry as contemplated by clause (2) of Article 311. Nothing has been brought to our notice to persuade us not to accept the said finding of the High Court. Even a copy of the counter filed by the respondents in the High Court is not placed before us. Once proviso (b) is held to have been validly invoked, the government servant concerned is left with no legitimate ground to impugn the action except perhaps to say that the facts said to have been found against him do not warrant the punishment actually awarded. So far as the present case is concerned, if one believes that the confession made by the appellant was voluntary and true, the punishment awarded cannot be said to be excessive. The appellant along with some other caused the death of the Superintendent of Police and a few other police officials. It must be remembered that we are dealing with a situation obtaining in Punjab during the years 1990-91. Moreover, the appellate authority has also agreed with the disciplinary authority that there were good grounds for coming to the conclusion that it was not reasonably practicable to hold a disciplinary enquiry against the appellant and that the appellant was guilty of the crime confessed by him. There is no allegation of malafides levelled against the appellate authority. The disciplinary and the appellate authorities are the men on the spot and we have no reason to believe that their decision has not been

arrived at fairly. The High Court is also satisfied with the reasons for which the disciplinary enquiry was dispensed with. In the face of all these circumstances, it is not possible for us to take a different view at this stage. It is not permissible for us to go into the question whether the confession made by the appellant is voluntary or not, once it has been accepted as voluntary by the disciplinary authority and the appellate authority.”

15. In the present case also, once the Enquiry Officer reaches to the conclusion that the petitioner was performing, his duties continuously and the Local Panchayat and Villagers found his work to be satisfactory. Therefore, petitioner cannot be said to be willfully and unauthorizedly absent from duty.

16. With regard to the non-compliance of the orders of the superior officers, the Enquiry Officer has reached to the conclusion that the orders were never served upon the petitioner and therefore, the issue of non-compliance also does not arise. In these circumstances, it is a case of no evidence.

17. The Supreme Court in the case of **Union of India and others** Vs. **P. Gunasekaran**; 2015(2) SCC 61 held as follows:-

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge No.1 was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under [Article 226/227](#) of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

- a. *the enquiry is held by a competent authority;*
- b. *the enquiry is held according to the procedure prescribed in that behalf;*
- c. *there is violation of the principles of natural justice in conducting the proceedings;*
- d. *the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. *the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. *the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. *the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. *the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. *the finding of fact is based on no evidence.*

Under [Article 226/227](#) of the Constitution of India, the High Court shall not:

- (i) *re-appreciate the evidence;*
- (ii) *interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) *go into the adequacy of the evidence;*
- (iv) *go into the reliability of the evidence;*
- (v). *interfere, if there be some legal evidence on which findings can be based.*
- (vi) *correct the error of fact however grave it may appear to be;*
- (vii) *go into the proportionality of punishment unless it shocks its conscience.”*

18. The aforesaid view has been reiterated by three Judges’ bench in the case of **Central Industrial Security Force and Others** VS. **Abrar Ali**;

2017 (4) SCC 507. This Court is satisfied that the present case falls in the first category of instances as mentioned in the case of **P. Gunasekaran** (Supra) especially (f) and (i) where this Court can interfere with the departmental proceedings. As the Enquiry Officer, after having noticed that the petitioner has continuously performed his duties, could not have reached to the conclusion that he was willfully and unauthorizedly absent from duty at the same time, there is no evidence of petitioner having misconducted himself and performed his work as a doctor at the same dispensary. In the circumstances, therefore, there was no occasion to hold him guilty and punish him with a penalty of dismissal from service.

19. In view of the above findings, the Writ Petition is **allowed**. The order of punishment of dismissal dated 27.08.1994 upon the petitioner is quashed and set aside and the order dated 19.06.1996 passed in the Review Petition is also quashed.

20. The petitioner would be deemed to be reinstated in service with continuity in service with all consequential benefits of pay fixation and also consequential retiral benefits, if the petitioner has in the meanwhile attained the superannuation. The benefits of ACP, if admissible, shall also be released to the petitioner.

21. The respondents would be required to calculate the arrears and make the payment to the petitioners within three months henceforth.

22. All pending applications filed in this Writ Petition shall stand disposed of accordingly.

October 20, 2023

Ess Kay

**[SANJEEV PRAKASH SHARMA]
JUDGE**

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>