

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-7707-1995 (O&M)

Reserved on: 08.12.2023

Date of Decision: 21.12.2023

Rameshwar Dass

. . . . Petitioner

Vs.

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. H.S. Saini, Advocate,
for the petitioner(s).

Mr. Charanpreet Singh, AAG, Punjab.

Mr. Aman Sharma, Advocate for respondent No.3.

SANJEEV PRAKASH SHARMA, J.

1. The petitioner by way of this writ petition prays for quashing of the punishment order of dismissal dated 01.07.1993; enquiry report dated 07.08.1992; and the order dated 23.02.1994 passed in the appeal whereby his appeal was rejected. He further prays to reinstate him in service with all consequential benefits, continuity of service including arrears of salary, seniority etc.

Brief facts:

2. Learned counsel for the petitioner states that the petitioner served in the Indian Army from 30.11.1962 till 26.05.1970, whereafter he was selected and appointed in the Department of Food and Civil Supplies on 14.05.1974. In the ordinary course, he had attained superannuation in the year 2003.
3. During his service, he was sent on deputation to the Punjab State Civil Supplies Corporation (hereinafter referred to as 'PUNSUP') on

14.09.1979. While on deputation, he was deployed as Inspector Incharge for the Lehragaga Centre in Sangrur District. He remained on deputation upto 26.11.1984, whereafter he was repatriated to his parent department. After having been repatriated to his parent department, he was suspended vide order dated 09.09.1986 and was charge-sheeted by serving a memorandum on 09.09.1986 wherein allegations were levelled on him for committing misconduct while on deputation with PUNSUP for the year 1982-83 and 1983-84.

4. As per the charge-sheet issued under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 (hereinafter referred to as 'Conduct Rules of 1970'), it was alleged that after reversion of petitioner to his parent department, it was found through the charge list while handing over the charge to Pargat Singh, Inspector that all the stores of wheat were infested with insects and the stock was in the condition of atta formation, and there was shortage of wheat noticed in the various bags in various godowns; and at the time of delivery of stock taken by Pargat Singh, Inspector, shortage was found in various godowns as mentioned in the tabular form in the charge-sheet. Pargat Singh has showed shortage at the time of taking over charge, 12 kg per bag while at the time of delivery of stock, it was 22.125 to 27.072 kg per bag. Thus, a shortage of 8508.84 quintals was found at the time of delivery of stock purchased by him. From the comparison of ledgers maintained by the petitioner/Rameshwar Dass and the Accounts Wing, it was found that there was shortage to the tune of 4276.61 quintals which was shown by the petitioner personally in the stock legers during period from October, 1982 to August, 1984. It was thus alleged

that the Corporation suffered a huge loss due to his negligence and a total shortage of 12815.45 quintals of wheat was attributed to him which came to the value of Rs. 25,63,000/-. There was another charge of not accounting for Rs.1,179/- as a petty cash account. The third charge levelled was with regard to allegation of wheat stock of 57968 bags purchased by him which was rejected due to his negligence. The rejected wheat was auctioned at a lower rate for which the Corporation suffered alleged loss of Rs.38,64,300/-. Therefore it was alleged that a loss of Rs.64,28,569/- was suffered by the Corporation on account of the petitioner which was recoverable from him.

5. Thus, it was a case alleging shortage in wheat as well as auctioning of rejected wheat on lower rate and non-depositing of petty advance, resulting in allegations of negligence towards duty; not keeping the stock of the Corporation in safe custody; embezzlement of material/stock of the department; and eye-washing the interest of the department.

Five witnesses were examined under the charge sheet and there was a list of record which was mentioned in support of the allegations.

6. The Deputy Director of Food and Civil Supplies was appointed as an Inquiry Officer who submitted his inquiry report, but the same was never made available to the petitioner. He was dismissed from service based on such inquiry report, on 07.05.1989.
7. The petitioner filed an appeal before respondent No.1 against the order of dismissal and the appeal was allowed by the appellate authority, and the matter was remanded back to the punishing authority with direction

that a fresh inquiry should be ordered and the inquiry officer was directed to give detailed findings on the points of defence raised by the petitioner. The petitioner appeared before the inquiry officer afresh where the respondents/State appointed one Sher Singh as presenting officer, who was an employee of PUNSUP. The inquiry was conducted by the Additional Director, Food and Civil Supplies, who submitted his inquiry report indicting the petitioner of the charge No.1, and the Director after agreeing with the inquiry report, dismissed the petitioner again from service vide order dated 01.07.1993.

8. The disciplinary authority as well as the inquiry officer did not hold the petitioner alone as guilty, but also held one Subhash Goel and Pargat Singh guilty and ordered the Managing Director, PUNSUP to proceed against the other two officials also. Appeal was preferred which was dismissed on 23.02.1994.

Petitioner's case:

9. Learned counsel for the petitioner submits that the inquiry proceedings are vitiated and suffer from the vice of violation of Rule 8 of the Conduct Rules of 1970, and also suffer from violation of principles of natural justice.
10. Learned counsel submits that in the first inquiry, which was held vitiated by the disciplinary authority, Sher Singh was a witness and was examined on behalf of the prosecution in support of the allegations. While in the second inquiry conducted by the respondents, Sher Singh was made as a presenting officer. Upon coming to know about the same, the petitioner submitted a detailed representation.

11. Learned counsel has taken this Court to the statement of Sher Singh made by him in the first inquiry to submit that Sher Singh was personally prejudiced to the petitioner. It is also submitted that Sher Singh was the District Manager at PUNSUP from 24.08.1984 to 05.06.1985 and was therefore related to the case. Representation dated 16.10.1991 submitted by the petitioner for changing the presenting officer was turned down, and it is submitted that serious prejudice has been caused to the petitioner as the allegations levelled against the petitioner are in relation to the same stock where the concerned presenting officer was holding the charge as a manager.
12. It is further submitted that Sher Singh was an employee of PUNSUP, and was an interested person. He was also not a government employee in terms of the Rule 2(d) of the Conduct Rules of 1970. Therefore he could not have been appointed as a presenting officer. Counsel submits that a person cannot be a witness and prosecuted at the same time in relation to the same case.
13. Learned counsel for the petitioner has also further assailed the inquiry on the count that while in the charge sheet, the witnesses which were cited were only five in number, during the fresh inquiry, ten witnesses were examined on behalf of the prosecution, who were brought without prior notice, and the petitioner was asked to cross examine them on the spot which he could not have done. This resulted in failure of fair and impartial inquiry as the petitioner was not given fair chance to conduct cross-examination.
14. It is further submitted that the petitioner was not held guilty for charge No.2 and 3, and the *de novo* inquiry was to be conducted only with

reference to the issues noticed by the appellate authority to be considered on few points relating to the defence taken by the petitioner. However, the inquiry officer conducted a fresh inquiry and held the petitioner guilty only of charge No.1, and therefore the petitioner could not have been dismissed from service. It is submitted that once the inquiry officer had found that responsibility for shortage of wheat in the godowns cannot be solely put on the petitioner, but Subhash Goel and Pargat Singh were also equally responsible, the petitioner alone could not have been singled out and punished.

15. Learned counsel has also submitted that the petitioner was on deputation and parent department could not have conducted an inquiry relating to the stock assessed, after the petitioner had already left PUNSUP. It is submitted that after almost 2 years, the charge sheet was issued to the petitioner. Moreover, the persons who conducted the inquiry had no knowledge relating to the work of PUNSUP, the stock lying there, and the manner of keeping the stock.

16. Learned counsel has further submitted that the crop was damaged on account of heavy rains which occurred. Further it is submitted that the damaged crop was purchased by the persons but was lifted after much delay. Resultantly, the new stock could not be shifted and the new stock also suffered loss. The loss therefore could not have been put on the petitioner.

17. Learned counsel submits that there is no allegation of embezzlement on the part of the petitioner. Further, the entire stock taking and assessment of loss of stock was done behind his back. However, all these arguments were not considered by the inquiry officer.

18. Learned counsel submits that while no action was taken against any other person, the petitioner was dismissed from service which is shockingly disproportionate, as the allegation is only of there being supervisory negligence. Learned counsel has relied on judgments of Supreme Court in *Arjun Chaubey vs. Union of India and others reported in 1984(2) SCC 578*, *Mohd. Yunus Khan vs. State of U.P. and others reported in 2010(10) SCC 539*, and *Union of India vs. J. Ahmed reported in 1979 (2) SCC 286*.

Respondents' case:

19. *Per contra*, counsel for the State submits that the inquiry was conducted by the State government after quantifying the loss and after sale of the old stock, which was done after drying the crops. He has submitted that the instructions were to purchase rain affected wheat after it was fully dried. There was no relaxation in moisture content, and it was the duty of the petitioner to maintain the health of the stocks. The health of the unlifted stocks should also have been preserved by the petitioner. It is also asserted that during the inquiry, Pargat Singh was not found guilty of the charges. It is further stated that the petitioner was the custodian of the stock, and it was his responsibility to maintain the health of the stocks.

20. It is also pointed out by the learned counsel for the State that the stock of 1983-84 was different from the stock of 1982-83 which had been spoiled by rains. The appellate authority has also noticed that the stocks of 1983-84 were exposed to pests as they were stored next to the stocks of 1982-83, and the circular issued by the PUNSUP is only a

relaxation of policy to purchase rain affected wheat. It provides no relief for damage caused by negligence.

Rejoinder:

21. Counsel for the petitioner has submitted rejoinder and stated that so far as the allegation on the petitioner of not taking proper care of health of the stock concerned, the same was not considered by the inquiry officer in spite of there being observations made by the appellate authority earlier while remanding the case to the new inquiry officer. The new inquiry officer did not advert to the said points which were specifically directed to be examined. Learned counsel submits that the inquiry officer has thus submitted a report which is vitiated in law.

Findings:

22. I have carefully considered the submissions.

23. This Court finds that the inquiry officer had earlier held the petitioner guilty of the charges and on the said basis, the petitioner was dismissed from service vide order dated 07.05.1989. Copy of the inquiry report was not made available to the petitioner.

24. Petitioner filed an appeal which was allowed on 01.08.1991 and the appellate authority remanded the matter for fresh inquiry and directed the inquiry officer to give clear cut and detailed findings on the issues as mentioned in the appellate order. The points of defence taken by the petitioner were that the wheat purchased in Rabi 1982 and wheat which was purchased in Rabi 1983 were not kept separately and the rain affected wheat purchased during Rabi 1982 was not stored separately; the wheat stocks were treated with medicines and looked after in accordance with the instructions of the Corporation; certain

medicines asked for by the petitioner were not provided by the Corporation. It was further submitted that the wheat was lying in stock at the time when the petitioner took over the charge. The shortage was as a result of the fact that rain affected wheat which had been purchased were found during inspection and had not been lifted. There was no shortage found during the inspections and as many as four inspections were conducted during the period when the petitioner was working.

25. At the time of handing over the charge to Pargat Singh, shortage was found to be of 4876.61 quintals, which was further found to be shortage of 8508.84 quintals at the time of handing over charge by Pargat Singh, which was after many more months.

26. However, this Court is conscious that it is not sitting in appeal and therefore it is not the scope for this Court to examine the facts of the case and the charges.

27. In the case of ***CISF and others vs. Abrar Ali*** reported in ***2017(1) SCT 682***, the Apex Court has followed its earlier judgment in ***Union of India & Ors. v. P. Gunasekaran*** reported in ***(2015) 2 SCC 610*** wherein it held as under:

““12. 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 inquiry officer. The finding on Charge I 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 Articles 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 inquiry is held by a competent authority;*
- (b) the inquiry 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 13.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.*

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) re-appreciate the evidence;*
- (ii) interfere with the conclusions in the inquiry, 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.” We are in agreement with the findings and conclusion of the Disciplinary Authority as confirmed by the Appellate Authority and Revisional Authority on Charge No. 1. Indiscipline on the part of a member of an Armed Force has to be viewed seriously. It is clear that the Respondent had intentionally disobeyed the orders of his superiors and deserted the Force for a period of 5 days. Such desertion is an act of*

gross misconduct and the Respondent deserves to be punished suitably.”

28. Keeping in view the guidelines as above and the provisions of the Conduct Rules of 1970, this Court finds that Rule 8 and 9 of the Rules lay down exhaustively the method and manner in which an inquiry is to be conducted for imposing major penalties. The provisions of Rule 8 and 9 are mandatory and have to be strictly followed. As per the said Rules, there is no provision for conducting an inquiry afresh and the only condition is to conduct *de novo* inquiry from a particular stage. However, the appellate authority directed for conducting a fresh inquiry. The copy of the earlier inquiry report was not made available to the petitioner. From the reading of the order passed in appeal whereby the earlier inquiry proceedings and dismissal order were set aside and the matter was remanded back, it is apparent that the appellate authority found the inquiry as vitiated in law. Since it directed for the defence of the petitioner to be considered by the inquiry officer, it is apparent that in the earlier inquiry, the defence of the delinquent was not considered and he was wrongly dismissed.

29. After remand, the inquiry officer was therefore bound to consider the defence of the petitioner afresh and was also required to only look into the points of remand. However, the new inquiry officer has conducted an inquiry afresh. Even the prosecution officer who conducted the inquiry earlier was changed and a witness who had appeared in the inquiry on behalf of the prosecution was made as a presenting officer. Such a course was not available for the respondents and defeats the very principle of fair and transparent inquiry.

30. In the case of *Arjun Chaubey* (supra), the Supreme Court has held that a person interested in a case cannot be a witness to the case. Thus, this Court finds that the inquiry report on that count becomes vitiated. The prosecution has not fairly put up the case before the inquiry officer. The defence put up by the petitioner relating to non-supply of medicines was also not examined. The application for changing of presenting officer was rejected by the inquiry officer, which reflects that there is a bias which has crept in the inquiry proceedings.
31. This Court also finds that the inquiry officer has reached to a conclusion that while the petitioner was negligent during his period in keeping the health of the stock, the officers subsequent and after also did not keep the stock properly, and the stock whereof shortage was noticed at the time of handing over of charge by the petitioner, became twice short by the time the inspection was done on handing over of charge by Pargat Singh, the subsequent manager.
32. Recommendation has also been made for recovering the amount from Pargat Singh in the ratio of 1:3. The appellate authority also noticed these aspects. However, it proceeds with an assumption as against the petitioner and holds the petitioner guilty of charge No.1. The inquiry officer in second inquiry does not hold the petitioner guilty of charge No.2 and 3, but the petitioner has been punished with the same punishment even though the allegations were not found to be proved completely as against him but against other persons too. The inquiry officer also fails to notice that the inspection was conducted after the petitioner had left from the post. Based on such inspection report, the petitioner has been held guilty which amounts to perversity, as

admittedly the petitioner has not participated during the inspection of the stock.

33. In these circumstances, it can be said that the inquiry was not conducted by following the principles of natural justice and fair play. Witness examined during the first inquiry has been made as presenting officer on remand, which vitiates the entire proceedings.

34. It is also noticed that Sher Singh, who was an employee of the Corporation could not be made as a presenting officer, as he was not a Government servant, while under the Conduct Rules of 1970, a presenting officer has to be a government servant.

35. This Court however does not agree with the contention of the petitioner that the parent department could not have conducted inquiry relating to delinquency conducted in the borrowing department. In fact, in all the cases where there is a delinquency alleged to have been committed by a person while on deputation, it is the parent department, which is the disciplinary authority, who has to take the final decision. The inquiry in this regard may be conducted by the borrowing authority whereafter the inquiry report has to be made available to the disciplinary authority of the parent department, or there can be no objection if the disciplinary authority himself appoints an inquiry officer to conduct inquiry of a person in relation to action done during deputation.

36. In the present facts and circumstances, this Court finds that while the inquiry officer and the disciplinary authority were empowered to conduct inquiry and take a decision, the inquiry officer has conducted inquiry *de hors* the Rules as already discussed hereinabove. The

disciplinary authority and the appellate authority have examined the petitioner's defence in a whimsical manner. The inquiry and the order passed by the disciplinary authority therefore are not sustainable in law.

37. This Court also finds that while the petitioner has not been held guilty for charge No.2 and 3, merely on the basis of supervisory negligence, petitioner has been punished with dismissal from service which is a capital punishment in service jurisprudence.

38. This Court finds that the punishment is thus shockingly disproportionate. There was no earlier incident of delinquency on the part of the petitioner. The punishment order therefore deserves to be set aside and is accordingly set aside. The petitioner would be entitled to all the consequential benefits of continuity in service and reinstatement with actual backwages as it cannot be said that the petitioner was not ready to perform his duties, principle of no work no pay would have no application thereof.

39. Having quashed the punishment order and the inquiry proceedings, this Court finds that the respondents have denied involvement of the other manager namely Pargat Singh, while the inquiry officer has held him to be guilty. Thus, there is no occasion to now direct a fresh inquiry in the matter. The incident is of the year 1982 to 1984, and the circumstances for the loss have not been attributed personally on the petitioner, but on account of the rainwater and so-called allegation of negligence in not maintaining the health of the stock.

40. However, as the petitioner has admitted that there was shortage of stock during his period, considering the law laid down by the Supreme Court in *B.C. Chaturvedi vs. Union of India and others reported in*

1995(6) SCC 749, and apparently it must have been on account of his supervisory negligence, this Court instead of remanding again the matter and finding that the punishment of dismissal is shockingly disproportionate and does not commensurate with the charge levelled, deems it appropriate to convert the punishment of dismissal to that of stopping of five grade increments with cumulative effect. The petitioner would be reinstated with continuity of service. His pay fixation shall be made in terms of the punishment order passed by this Court, which shall be applicable from the date of order passed of dismissal.

- 41. During the pendency of petition, the petitioner has attained superannuation. Therefore, he would be also entitled to get his pay fixations done as per the punishment order, and his retiral benefits shall also be released after calculating the same, treating him to be deemed in service till date of retirement.
- 42. Entire exercise shall be completed within a period of four months.
- 43. Writ Petition stands partly allowed in aforesaid terms.
- 44. No costs.
- 45. All pending applications also stand disposed of accordingly.

(SANJEEV PRAKASH SHARMA)
JUDGE

December 21, 2023

Mohit goyal

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |