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

**CWP No.5635 of 2019(O&M)
Date of Decision: 24.02.2023**

Surender Singh

.....Petitioner

Vs

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Dr. S.K. Redhu, Advocate and
Mr. Ajay Redhu, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana.

RAJ MOHAN SINGH, J.(Oral)

[1]. The petitioner has preferred this writ petition for the issuance of an appropriate writ in the nature of certiorari, quashing the order dated 07.07.2014 passed by the respondent No.4, order dated 16.09.2016 passed by the respondent No.4, down grading the ACR for the period 01.04.2014 to 14.11.2014, order dated 11.11.2016 passed by the respondent No.3, rejecting the representation of the petitioner against adverse remarks and order dated 26.10.2018 passed by the Grievance Redressal Committee, dismissing the statutory appeal of the petitioner. The petitioner has also prayed for relief of

consequential benefits arising out of his total length of service including promotion to the post of Exemptee ASI and also further promotion on the basis of qualifying requisite length of service in view of standing order No.127/2008 issued by the Director General of Police, Haryana.

[2]. The petitioner was recruited as Constable in Police Department on 28.08.1992. When the petitioner was posted in CIA, Palwal, a departmental enquiry was initiated against the petitioner and Inspector Dilbag Singh on 04.06.2013 with the allegation of suspicion that they had mixed up with some speculator namely Raj Kumar. Joint departmental enquiry was conducted by the Deputy Superintendent of Police. Vide enquiry report dated 26.11.2013, the petitioner and the aforesaid Inspector Dilbag Singh were exonerated by the enquiry officer and the report was submitted before the respondent No.4. The conclusion drawn by the enquiry officer reads as under:-

Conclusion:- This departmental was initiated against Insp. Dilbag Singh, G/193 and EHC Surender Singh NO. 129/Narnaul on the suspicion of mixing up with the speculators. The scrutiny of the statements of prosecution witnesses, documents available on record, replies submitted by the delinquents in response to charge sheet and received other documents revealed that an information received in C.I.A. Staff Palwal that Raj Kumar son of Sri Chand Caste Punjabi resident of

house No. 1437/89 Jawahar Nagar, Palwal indulged in speculation and on the asking of delinquent Inspr. Dilbag Singh delinquent EHC Dilbag Singh from his mobile made a call to abovementioned speculator Raj Kumar to come present, due to not coming delinquent Dilbag Singh from his mobile made a call to him on 13.05.13 but he did not come. Thereafter, delinquent Inspr. Dilbag Singh caught him red handed for speculation and registered a case No. 185 dated 22.05.13 u/s 13A.3.67 Gambling Act Police Station Camp Palwal In this departmental enquiry no evidence came against the delinquents Inspr Dilbag No. G/193 and EHC Surender Singh 129/Narnaul nor clear allegation in the preliminary enquiry conducted by Shri Badan Singh Rana, the then Deputy Superintendent of Police, City Palwal in this regard. This departmental enquiry was ordered on the complaint suspicion of mixing up of delinquent Inspr Dilbag Singh with speculators but delinquent Inspr. Dilbag Singh G/193 on receipt of information registered a case against abovesaid speculator Raj Kumar. Therefore, allegations levelled against delinquent Inspr. Dilbag Singh G/193 and EHC Surender Singh No. 129/Narnaul are not proved.”

[3]. The Punishing Authority/respondent No.4 prepared a disagreement note with the findings recorded by the enquiry officer and issued a show cause notice to the petitioner alone, whereas the findings of exoneration recorded in favour of Dilbag Singh were not interfered. The respondent No.4 similarly issued show cause notice after recording note of disagreement on

10.06.2014. The petitioner filed his reply to the aforesaid show cause notice, but the Punishing Authority/respondent No.4 without considering the law on the subject, particularly in view of ratio laid down in **Punjab National Bank Vs. Kunj Behari Misra, 1998(3) SCT 833**, proceeded to order punishment vide order dated 07.07.2014, thereby awarding punishment of one future increment with temporary effect. On the basis of aforesaid punishment, ACR for the period 01.01.2014 to 14.11.2014 was sought to be down graded and a show cause notice was issued to the petitioner on 27.07.2016. The petitioner filed his reply to the aforesaid show cause notice dated 27.07.2016, but the respondent No.4 proceeded to down grade the Annual Confidential Report of the petitioner for the period 01.04.2014 to 14.11.2014 solely on the basis of punishment of stoppage of future increment with temporary effect.

[4]. Against the aforesaid down gradation of ACR for the period 01.01.2014 to 14.11.2014, the petitioner filed his representation before the respondent No.3 for expunging adverse remarks in the ACR, which was dismissed by the respondent No.3 vide order dated 11.11.2016. Against the order of punishment, the petitioner filed statutory appeal before the respondent No.3 and the same was dismissed by the Appellate Authority/Grievance Redressal Committee vide order dated 26.10.2018. That is how, all the aforesaid proceedings have

been assailed in the present writ petition.

[5]. Learned counsel for the petitioner with reference to **Kunj Behari Misra's case (supra)** submits that the basic action in the form of issuance of show cause notice by recording disagreement note against the findings of enquiry officer run contrary to the ratio of **Kunj Behari Misra's case (supra)**. The disciplinary authority in case of showing disagreement with the enquiry authority on the article of charge was required to record its own findings with tentative reasons for such disagreement and a reasonable opportunity was required to be given to the delinquent before recording of such disagreement note. In any case, the principles of natural justice are required to be followed by giving an opportunity to the delinquent charged on misconduct. Para No.16 of the aforesaid judgment reads as under:-

“16. 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 favourable 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.”

[6]. On the same set of allegations, the enquiry officer exonerated the petitioner and the co-suspect namely Inspector Dilbagh Singh. The Punishing Authority did not proceed against the said Dilbagh Singh by recording any note of disagreement against the findings of the enquiry officer, but the petitioner has been isolated firstly by recording disagreement note and issuing show cause notice on that very day without following principles of natural justice. Not only that, ACR of the petitioner for the period 01.04.2014 to 14.11.2014 was also down graded solely on the basis of punishment of stoppage of one increment without cumulative effect, which was passed on the basis of down gradation of his ACR.

[7]. Learned counsel for the petitioner with reference to **Man Singh Vs. State of Haryana and others, 2008(3) SCT 364** submits that the petitioner ought to have been treated equally in the matter of departmental action/punishment by the Punishing Authority and the Punishing Authority cannot be permitted to resort to selective treatment in case of delinquent

charged with similar allegations. The enquiry proceedings were initiated solely on the basis of suspicion and after exoneration thereof, even the suspicion had ultimately resulted into the findings of exoneration. Mere suspicion was not sufficient to record findings of disagreement by the respondent No.4 as the enquiry officer was performing *quasi* judicial function and the charges against the delinquent were required to be proved on the basis of material on record. The Punishing Authority was not required to consider any such irrelevant fact over and above the material brought on record during the enquiry proceedings. Learned counsel refers to **Roop Singh Negi Vs. Punjab National Bank and others, 2009(4) SLR 78** in this context. Para Nos.15 and 17 of the aforesaid judgment read as under:-

*“15. Yet again in **M.V. Bijlani Vs. Union of India and others, 2006(2) SCT 454: (2006) 5 SCC 88**, this Court held:*

".... Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e, beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He

cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

17. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof."

[8]. Evidently, the Punishing Authority/respondent No.4 has not followed due legal procedure before imposing the punishment. The other proceedings are the resultant effect of the punishment awarded pursuant to the issuance of show

cause notice and recording of disagreement note against the findings of the enquiry officer.

[9]. *Per contra*, learned State counsel submits that the recording of disagreement note simultaneously with the show cause notice is a mere irregularity and cannot vitiate the impugned action. Learned State counsel further submits that alternative remedy is available to the petitioner and this writ petition is not maintainable.

[10]. I find that the alternative remedy where the controversy is revolving purely on legal parameters and does not involve any disputed question of fact, then it can be decided by this Court instead of dismissing the writ petition on the ground of alternative remedy being available to the petitioner.

[11]. It can safely be observed on the basis of conclusion drawn that if alternative remedy is available, the High Court is not precluded from exercising writ jurisdiction in view of facts and circumstances of the case, particularly when the issue involved is pure question of law.

[12]. In the instant case, issuance of show cause notice simultaneously with the disagreement note has been deprecated by the Hon'ble Apex Court in **Kunj Behari Misra's case (supra)** and the aforesaid position cannot be changed even before the appellate jurisdiction. Reference can be made

to **Balkrishna Ram Vs. Union of India and another, 2020(1) Scale 668** and **Civil appeal No.5393 of 2010 titled M/s Godrej Sara Lee Ltd. Vs. The Excise and Taxation Officer-cum-Assessing Authority and others decided on 01.02.2023.** In **Magadh Sugar and Energy Limited Vs. State of Bihar and others, 2021 SCC Online SC 801,** the Hon'ble Apex Court has laid down the principles of law for exercising the powers by the High Court in certain cases i.e.

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where

(a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution;

(b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition

should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

[13]. For the reasons recorded hereinabove, this writ petition is allowed. Impugned orders are hereby set aside. Normal consequences to follow.

24.02.2023

Prince

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No