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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-14071-2019

Date of Decision: 03.07.2023

Avtar Singh

. . . . Petitioner

Vs.

The State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. A.K. Walia, Advocate
 for the petitioner.

Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. By way of present petition, the petitioner assails the order of punishment dated 16.01.2018 (Annexure P-4), whereby he has been punished stopping of 2 grade increments with cumulative effect.
2. Counsel for the petitioner submits that the entire departmental proceedings were wrongful and illegal as the petitioner had been acquitted by a competent court for offences under section 222(1), 223 and 224 IPC on 24.10.2016.
3. Learned counsel submits that without conducting any inquiry, the petitioner had been dismissed from service. Earlier, the said order was quashed by this Court vide order dated 15.12.2016 passed in CWP-8865-2014 with the following observations:

“By considering the facts and law position as discussed above, both the abovesaid petitions i.e. CWP No.12697 of 2014 and CWP No.8865 of 2014 deserve to be allowed and as such the order of dismissal dated 21.08.2012

(Annexure P-4/T) of the present petitioner as well as petitioners in CWP No.8865 of 2014 and the order dated 14.08.2013 (Annexure P-6/T) passed in the appeal are hereby quashed. However, the respondents are at liberty, if so advised, to hold a departmental inquiry against the petitioner(s) by affording them a reasonable opportunity of being heard and thereafter, pass appropriate order as it may deem fit in accordance with law within a period of two months from the date of receipt of certified copy of this order.”

4. Taking clue from the observations made as above, the authorities initiated inquiry afresh against the petitioner after reinstating him.
5. In the inquiry, the inquiry officer gave ample opportunity to the petitioner to submit his defence and after considering all the aspects, the inquiry officer reached to the conclusion that the undertrial prisoner had been referred to an outside hospital by the jail doctor on having fallen ill on 13.08.2012 and strict instructions were issued to keep a strict vigil on him. The doctors at the Guru Nanak Dev Hospital, Amritsar discharged the concerned inmate and handed him over to the warder Avtar Singh (petitioner) who did not even wait for his other colleague warders Surjit Singh and Satnam Singh who had gone to take their meals, and on his own got the concerned inmate discharged and took him out. Due to his negligence, the concerned inmate escaped.
6. The allegations as against the petitioner were therefore found to be proved while the said allegations against the other two warders were not found to be proved as they were not present at that time when the concerned inmate had escaped from the custody. The Deputy Inspector General having considered the inquiry report and also having considered the petitioner having been acquitted in the criminal case, reached to an independent conclusion that the petitioner was guilty of the charges leveled against him of having negligently taking the inmate

outside the hospital all alone resulting in his escaping from the petitioner's custody.

7. After having considered all the other aspects, punishment of stopping of two annual increments with cumulative effect was passed as against the petitioner.
8. Contention of learned counsel that the inquiry could not have been conducted after the petitioner had been acquitted of the said charges in criminal case, is found to be wholly misconceived. In the criminal case, the allegations against the petitioner were for offences under section 222(1), 223 and 224 IPC which included not only 'negligence' but 'intentional negligence' also. Whereas in the departmental proceedings, the charges are limited only to the extent of dereliction of duty in not waiting for the other two warders to be present for taking the inmate from the hospital which resulted in the escaping of concerned inmate.
9. Further contention of learned counsel for the petitioner with regard to the duties of taking of inmates from jail to the hospital in terms of Punjab Jail Manual to be assigned to the police constables alone and not to the warder, is also found to be without basis as no such defence was taken up before the inquiry officer nor any such provisions were placed before the inquiry officer or before the disciplinary authority as part of defence by the concerned delinquent. A new argument before this Court which has not been taken up in inquiry proceedings cannot be examined at this stage. The scope of interference in departmental inquiry is minimal in writ proceedings as their course is not hearing appeal.
10. 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;*

13.(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.”

- 11. In view of above, this Court does not find that the case is falling within the scope as laid down by the Apex Court.
- 12. The judgment cited at the bar by learned counsel titled as ***‘Vijay Pal and other vs. State of Haryana and others’*** reported in ***2017(5) SLR 310*** has no application in the facts of the present case as they are clearly distinguishable.
- 13. Keeping in view the above, this Court does not find any reason to interfere with the order passed by the disciplinary authority as upheld by the appellate authority.
- 14. Petition stands dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

July 03, 2023
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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |