

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

206

CWP-21606-2013

Date of Decision : 11.12.2023

DILER SINGH

..... PETITIONER

V/S

UNION OF INDIA & ORS

..... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Kartikey Chaudhary, Advocate for
Mr. Samrat Malik, Advocate
for the petitioner.

Ms. Anita Balyan, Sr.Panel Counsel
for the respondents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of enquiry report dated 20.06.2012 (Annexure P-4); order dated dated 04.07.2012 (Annexure P-5) whereby penalty of compulsory retirement was imposed; order dated 11.08.2012 (Annexure P-7) passed by Appellate Authority whereby appeal has been dismissed; order dated 21.11.2012 (Annexure P-9) whereby revisionary authority has dismissed revision.

2. The petitioner by order dated 04.07.2012 was compulsorily retired on account of dereliction in duty. The allegation against the petitioner was that while he was posted on the gate of Bokaro Steel Plant, Bilai, a Tata-Sumo carrying labourers thrice entered the steel plant and the petitioner did not stop the said vehicle. The petitioner was issued charge-

sheet and an enquiry was conducted which resulted into impugned order of compulsory retirement. The petitioner unsuccessfully preferred appeal as well as revision before appellate and revisionary authority.

3. Learned counsel for the petitioner submits that punishment awarded is disproportionate to the alleged misconduct, thus, awarded punishment deserves to be re-considered.

4. Learned counsel for the respondent-UOI submits that there was dereliction in duty on the part of petitioner and it was not the first instance whereas he was punished on earlier occasion which compelled the authorities to compulsorily retire him. The petitioner was part of a disciplined force and any mistake or negligence on his part could cause disaster. The authority after applying its mind has ordered to compulsorily retire the petitioner. The petitioner has been extended all the retiral benefits including pension. Had the petitioner not been compulsorily retired, he would have retired on 31.12.2021, thus, the present petition in any case has rendered infructuous.

5. I have heard the arguments of learned counsel for the parties and perused the record.

6. Concededly, the petitioner was part of a disciplined force. There was admittedly lapse on his part. The petitioner on earlier occasions, was subjected to one major and four minor penalties for indulging in corrupt practices such as misappropriating fuel from the Government vehicle, sleeping on duty, overstaying and manhandling colleagues.

7. It is settled proposition of law that scope of interference while exercising jurisdiction under Articles 226/227 of the Constitution of India in disciplinary proceedings is very limited. The Court has no power to look

into quantum of sentence/punishment unless and until Court finds that sentence awarded is disproportionate to alleged offence. It is further settled proposition of law that High Court while exercising its jurisdiction under Article 226 of Constitution of India can look into the procedure followed by authorities. In case, it is found that enquiry officer or disciplinary authority has not considered any evidence on record or misread the evidence or procedure as prescribed by law has not been followed, the Court can interfere. A two-judge Bench of Hon'ble Supreme Court in **Union of India and others vs. Subrata Nath, 2022 LiveLaw (SC) 998** while advertng with scope of interference under Article 226 of the Constitution of India in disciplinary proceedings has held that departmental authorities are fact finding authorities. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. The Hon'ble Supreme Court has considered its judicial precedents including a two-judge Bench judgment in **Union of India and Others v. P. Gunasekaran.** The relevant extracts of the judgment read as :

“19. Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in Union of India and Others v. P. Gunasekaran held thus :

“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, reappreciating even the evidence before the enquiry 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 reappreciation 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.

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

(i) reappreciate 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.”

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22. *To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If*

the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor.”

8. The petitioner has been compulsorily retired along with all retiral benefits and he was punished five times on earlier occasions. This Court does not find that punishment awarded was disproportionate to the alleged misconduct. The petitioner, in any case, would have retired on 31.12.2021.

9. In the wake of law laid down by Supreme Court as well as above discussion and findings, this Court is of the considered opinion that the present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

11.12.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No