

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

128

CWP-14312-2023

Date of Decision : 18.07.2023

Gurwinder Singh

..... Petitioner

Versus

Union of India and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Salil Sabhlock, Advocate
for the petitioner.

Mr. S.K.Sharma, Sr. Panel Counsel
for the respondent.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of Constitution of India is seeking setting aside of charge-sheet dated 01.07.2021 (Annexure P-1), enquiry report dated 31.08.2021 (Annexure P-3) and order dated 30.09.2021 (Annexure P-4) whereby he has been awarded punishment of stoppage of three annual increments with cumulative effect.

2. The petitioner is working as Constable with respondent-department. The petitioner was served charge-sheet dated 01.07.2021 wherein it was proposed to hold an enquiry under Rule 153 of the Railway Protection Force Rules, 1987. There were three charges against the petitioner. The enquiry officer found no substance in one charge, however, two charges were proved. On the basis of enquiry report, the disciplinary authority imposed penalty of withholding of three increments with cumulative effect. The petitioner preferred an appeal which came to be

dismissed. The petitioner further unsuccessfully preferred a revision petition.

3. Learned counsel for the petitioner *inter alia* contends that penalty imposed is disproportionate to alleged offence. The disciplinary authority as well as enquiry officer has primarily relied upon data available on you-tube i.e. slogans raised by public against RPF and specially against the petitioner. The witnesses have not supported case of the prosecution, however, enquiry officer has held that charges stand proved against the petitioner. The findings recorded by enquiry officer are contrary to evidence led during the course of enquiry, thus, interference of this Court is warranted.

Mr. Kapil Kumar accomplice of the petitioner was main accused whereas he has been awarded minor punishment whereas the petitioner who is not the main accused has been awarded major punishment. The enquiry proceedings were conducted in violation of rules especially rule with respect to cross-examination of witnesses. The witnesses were cross-examined by enquiry officer whereas they could be cross-examined by the delinquent officer. He places reliance upon judgment of Hon'ble Supreme Court in *M.V.Bijlani vs. Union of India and others, 2006(5) SCC 88* in support of his contention.

4. Mr. Sharma, pointing out findings recorded by enquiry officer as well as disciplinary authority submits that scope of interference on the part of High Court is limited. It is settled proposition of law that High Court can interfere only if the authorities have recorded findings contrary to evidence on record or has not considered evidence at all or there is violation of principles of natural justice or the procedure prescribed by law has not

been followed whereas in the present case, the petitioner was duly subjected to enquiry and thereafter served with opportunity to put forth his stand. The authorities have recorded categorical findings qua alleged offence.

5. I have heard arguments of learned counsel for the parties and with their able assistance perused the record.

6. 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. Gunasekaran¹³ 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) reappraise 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.”

X X X X

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.”

7. Applying the law laid down by Hon'ble Supreme Court, this Court neither finds that penalty imposed by authorities is disproportionate to alleged offence nor finds any infirmity warranting interference by this Court. The authorities have considered video uploaded on you-tube which clearly indicates that on account of act and conduct of petitioner and his accomplice public gathered and raised slogans against the Force as well as the petitioner. This Court during the course of hearing has also seen the same video and finds that act and conduct of the petitioner has caused damage to reputation of the force, thus, authorities have rightly awarded punishment.

8. The present petition sans merit and deserves to be dismissed.

9. Dismissed.

18.07.2023
anju

(JAGMOHAN BANSAL)
JUDGE

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