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

CWP-26677-2015

Date of Decision:12.12.2023

GURBACHAN SINGH @ GURBACHAN DASS Petitioner

Versus

STATE OF PUNJAB AND ORS Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Davinder Singh Khurana, Advocate
for the petitioner.

Mr. Deepanjay Sharma, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of enquiry report dated 25.08.2009 (Annexure P1); order dated 05.03.2010 (Annexure P-3) whereby punishment of forfeiture of 1 year was awarded; order dated 27.04.2011 (Annexure P-7) whereby Appellate Authority dismissed appeal of the petitioner; order dated 18.10.2011 (Annexure P-9) whereby Revisionary Authority dismissed revision of the petitioner and order dated 29.05.2012 (Annexure P-11) whereby Secretary, Department of Home, Government of Punjab dismissed mercy petition of the petitioner.

2. The petitioner is working with Punjab Police. The petitioner was posted at office of Passport Authority. He was head of the security team. An FIR No.133 dated 24.07.2009 was registered under Sections

420, 467, 468, 471 and 120B of IPC against different persons alleging that they have prepared fake passports. The petitioner was found guilty on account of inaction. He did not care of illegal activities going on in the Passport Office. An inquiry was conducted which was followed by order of punishment of forfeiture of 1 year service. The petitioner unsuccessfully preferred appeal, revision and mercy petition.

3. Learned counsel for the petitioner submits that apart from petitioner there were other accused and they have been awarded lesser punishment than the petitioner, thus, on the ground of parity the punishment awarded to the petitioner deserves to be set aside.

4. Learned State counsel submits that petitioner is a habitual offender. The petitioner was punished on nine different occasions, thus, petitioner does not deserve leniency.

5. 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 adverting 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.”

6. The petitioner has been awarded punishment of forfeiture of 1 year service and on nine occasions he has been previously punished. This shows that he is a habitual offender. He cannot claim parity with others. This Court does not find that punishment awarded was disproportionate to alleged misconduct. Considering law laid down by Supreme Court as well totality of facts and circumstances, this Court is of the considered opinion that the present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

12.12.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No