118 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-17391-2023
Date of Decision: 03.10.2023

Yuvraj Kumar ..Petitioner

Versus

State of Punjab and others …Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA.

Present Mr. Karanvir Singh Khehar, Advocate for the petitioner.

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SANJEEV PRAKASH SHARMA, J. (Oral)

1. In this writ petition, the petitioner has assailed the order dated 15.11.2021 (Annexure P-12), whereby he has been punished in departmental proceedings with stoppage of one annual increment with future effect and has also assailed order passed 18.08.2022(Annexure P-14), upholding the order of punishment and dismissing the appeal filed by the petitioner.

2. Learned counsel for the petitioner submits that the Enquiry Officer had conducted an inquiry and submitted inquiry report dated 08.06.2021, wherein, he did not find any delinquency committed by the petitioner and thereby exonerated the petitioner of the charges. However, the Enquiry Officer later on submitted another inquiry report, whereby the petitioner was held guilty of the charges, which could not have been done especially in view of there being no direction having been issued by the disciplinary authority for conducting fresh inquiry. Learned counsel for the petitioner by relying upon the judgments of the Hon’ble Apex Court in the case of ***K.R. Deb vs. Collector of Central Excise, Shillong 1971 (2) SCC***

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102 and ***Vijay Shankar Pandey vs. Union of India and another (2014) 10 SCC 589***, submits that there is no provision for the disciplinary authority to completely set aside the previous inquiry report. Learned counsel submits that the disciplinary authority has not held the petitioner guilty of committing theft of liquor and in fact the afore charges leveled against the petitioner were not found to have been proved and that the petitioner has been punished with major penalty of stoppage of one annual increment and the Appellate Authority has failed to take notice of the said aspect and confirmed the punishment order.

3. I have considered the submissions.

4. The first argument relating to the disciplinary authority of conducting second inquiry after the first inquiry report has been submitted, wherein, the delinquent has been exonerated, requires to be considered. In K.R. Dev's case (supra), the Hon'ble Supreme Court held as under:-

> *"12. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get" some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant.*
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> *13. Before the Judicial commissioner the point was put slightly differently and, it was urged that the proceedings showed that the Disciplinary Authority had made up its mind to dismiss the appellant. The Judicial Commissioner held that on the facts it could not be said that the Disciplinary Authority was*

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prejudiced against the appellant. But it seems to us that on the material on record a suspicion does arise, that the Collector was determined to get some Inquiry Officer to report against the appellant."

5. In Vijay Shankar Pandey's case (supra), the Hon'ble Supreme Court held as under:-

"23. It can be seen from the above that the normal rule is that there can be only one Enquiry. This Court has also recognized the possibility of a further Enquiry in certain circumstances enumerated therein. The decision however makes it clear that the fact that the Report submitted by the Enquiring Authority is not acceptable to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a second Enquiry."

6. Keeping in view the aforesaid principles, when the facts of the present case are examined, I find that the Deputy Commissioner, Excise, Jalandhar Zone, Jalandhar, was appointed as Enquiry Officer, to conduct an inquiry, whereupon, he submitted his report to the Taxation Commissioner, vide his letter dated 08.06.2021. Thereafter, he sent a letter to the Taxation, Commissioner on 05.07.2021, pointing out that certain evidence was produced before him relating to the inquiry, which has a direct bearing on the inquiry and, therefore, the said evidence, which was also required to be considered while conducting inquiry, had not been made part of the earlier inquiry and, therefore, he has submitted another inquiry report along with the said letter dated 05.07.2021, whereby, he has held that the charges

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levelled against the petitioner stand proved. Thus, it is not a case where the disciplinary authority directed for a re-inquiry nor it is a case of de-novo inquiry and rather, it is only a case where the Enquiry Officer corrects his earlier inquiry report on the basis of evidence which was there before it. The earlier inquiry report was not sent to the petitioner separately but it is the second inquiry report which is the final conclusion of the Enquiry Officer.

7. In view thereof, the law cited hereinabove, would have no application to the present case as the same are on completely different footing. The facts in the judgments (supra) cited by learned counsel for the petitioner, were that the disciplinary authority did not accept the inquiry report and directed for a re-inquiry/fresh inquiry. The Constitutional Bench in the case of K.R. Deb's case (supra) while holding that disciplinary authority does not have the powers to get the some other officer to conduct a fresh inquiry, also observed that the same Enquiry Officer can always be asked to record further evidence.

7. In the present case, the Enquiry Officer suo-motu has corrected his earlier inquiry report, without there being any direction from the disciplinary authority to conduct any fresh/de-novo inquiry. Therefore, this Court holds that such an action taken by the Enquiry Officer cannot be said to be unwarranted, unjustified or illegal.

8. Coming to the next argument raised by learned counsel for the petitioner, this Court finds that the conclusion drawn by the disciplinary authority is that while the petitioner cannot be said to be at fault in theft of liquor, ample proof has come on record of the petitioner negligent towards

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his duties as there has been continuous theft of liquor while he was posed at the said distillery as Excise and Taxation Inspector and the disciplinary authority has noticed that if such illegal acts occur during his posting, liability of the Excise and Taxation Inspection for negligence and carelessness is found to have been proved. Such an opinion arrived at by the disciplinary authority cannot be said to be unjustified or unwarranted.

9. Considering the limited scope as laid down by the Hon'ble Apex Court in the case of ***Union of India and others*** Vs. ***P. Gunasekaran***; *2015(2) SCC 61*, in disciplinary proceedings of this Court, no interference is required to be made to the orders impugned. The writ petition is found to be devoid of merit and is accordingly dismissed.

03.10.2023 **[SANJEEV PRAKASH SHARMA]**
rajesh **JUDGE**

Whether speaking / reasoned : Yes/No.
Whether Reportable : Yes/No

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