

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

**LPA No. 1139-2023 (O&M)
Date of Decision 16.10.2023**

Constable Balinder Kumar

-----Appellant

Versus

State of Punjab and others

---Respondents

**CORAM: HON'BLE MS. JUSTICE RITU BAHRI,
ACTING CHIEF JUSTICE
HON'BLE MRS. JUSTICE MANISHA BATRA**

Present: Mr. Bikramjit Singh Patwalia, Advocate
for the applicant-appellant.

Ms. Anu Pal , Sr. DAG, Punjab
for the respondents.

RITU BAHRI, ACTING CHIEF JUSTICE.

C.M. No. 2914-LPA-2023

For the reasons mentioned in the application, delay in refiling of
293 days is condoned.

The application stands allowed.

LPA No. 1139-2023

The instant appeal under Clause X of the Letters Patent is
directed against the judgment/order dated 09.8.2022 rendered by the learned
Single Judge while dismissing the writ petition filed by the appellant.

2. Brief facts of the case are that the appellant was inducted in
Commando Battalion as Constable on 05.05.1994. On 31.05.2003, B-1 test
was conducted for 09 posts of General quota wherein appellant acquired 10th
position. The appellant submitted an application before respondent No. 5 for

sanction of one additional post for promotion list B-1 for District Hoshiarpur. Awaiting response to this application, the appellant appeared for next examination on 29.02.2004. The candidature of the appellant was cancelled on the allegation that he was trying to take undue help from other candidates for solving the question paper. He was served with charge-sheet on 16.03.2004, followed by departmental inquiry, wherein the charges levelled against the appellant were proved. A show cause notice dated 10.06.2005 was issued to *the appellant proposing punishment of dismissal of service, to which he filed his reply. However, he was inflicted punishment of forfeiture of one year service permanently. He was also restrained from appearing in the B-1 test for the coming two years. The appellant preferred an appeal before respondent No. 4, who vide order dated 20.10.2005 upheld the punishment of forfeiture of one year's approved service with permanent effect on annual increments, lifted the ban on appellant from appearing in the B-1 test for two years.* A revision petition was also filed by the appellant against order dated 20.10.2005 before respondent No. 3 and the same was dismissed, vide order dated 30.01.2006. The mercy petition filed by the appellant was also dismissed on 17.07.2006. Thereafter, the appellant filed the writ petition, which was also dismissed and hence the present appeal.

3. We have heard learned counsel for the appellant at some length and find that the appeal filed by the appellant deserves to be dismissed.

4. A bare perusal of the impugned judgment shows that the petition filed by the petitioner/appellant was dismissed by the learned Single Judge on the ground that it has not been proved on record that there were infirmities and irregularities in the process of conducting an inquiry and

further the principles of natural justice were not violated. Reference has been made to the judgment of Hon'ble the Supreme Court of India in a case of ***Union of India and ors vs. P. Gunasekaran*** (2015), SCC 610 wherein Hon'ble the Supreme Court has observed as under:-

"13. 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 enquiry officer. The finding on Charge no. 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 Article 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 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.*

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate 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.

5. In the present case, the appellant was proposed to be given punishment of dismissal from service. However, by taking a lenient view, he was inflicted punishment of forfeiture of one year service with permanent effect on increment by the punishing authority itself. He was also restrained from appearing in the B-1 test for the coming two years. On appeal, the ban imposed upon the appellant from appearing in the B-1 test, was also lifted.

6. Keeping in view the fact that the appellant was not able to prove on record that the complainant acted with an ulterior motive against the appellant, the learned Single Judge has rightly dismissed the petition filed by the writ-petitioner/appellant, as neither there were infirmities in the process of conducting an enquiry nor the principles of natural justice were violated.

7. In view of the aforesaid reasons, the instant appeal fails and the same is dismissed.

(RITU BAHRI)
ACTING CHIEF JUSTICE

(MANISHA BATRA)
JUDGE

October 16, 2023
G Arora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No