

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 22533 of 2021

Date of Decision: 03.03.2023

Surinder Pal Bansal

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Raj Kumar Garg, Advocate
for the petitioner(s).

Mr. R.S.Pandher, Senior Deputy Advocate General,
Punjab, for the respondents.

Anil Kshetarpal, J.

1. The petitioner prays for the issuance of a writ in the nature of certiorari to quash the orders passed on 08.10.2015 by the Punishing Authority which has been confirmed in appeal on 12.10.2018.
2. The relevant facts, in brief, are required to be noticed. The petitioner was employed as a Block Development and Panchayat Officer in the month of August, 1995. He, under the self-employment scheme, applied for grant of leave for a period of five years from 13.03.2006 to 12.03.2011 which was sanctioned. When the petitioner was on leave, he was promoted as District Development and Panchayat Officer. The petitioner is stated to have reported back on duty on 14.03.2011 and he was posted as Deputy Chief Executive Officer, Zila Parishad, Faridkot. However, the petitioner did not join his duties, resulting in issuance of the charge sheet under Rule 8 of

referred to as “the 1970 Rules”). The petitioner did not file reply to the charge sheet. The notices issued by the Inquiry Officer were also not responded to by the petitioner, resulting in an *ex parte* inquiry which was concluded on 26.10.2012. Thereafter, the petitioner was sent a copy of the Inquiry Report along with the show cause notice which is stated to have been received by one Vaneet, the petitioner’s family member, on 25.03.2013. However, he did not submit any explanation. With the approval of the Punjab Public Service Commission, he was dismissed from service on 08.10.2015. He filed an appeal on 10.10.2016 which has been dismissed being barred by time.

3. Heard the learned counsel representing the parties at length and with their able assistance perused the paper-book.

4. The learned counsel representing the petitioner submits that the petitioner did try to join the office of the Zila Parishad, Faridkot, however, some other officer was already posted as Deputy Chief Executive Officer. Hence, the petitioner came back to the head office. However, on 05.04.2011, he was diagnosed with Parkinson disease. Thereafter, the petitioner, for a bonafide reason, could not attend the office. He submits that the petitioner was neither served with the charge sheet during the course of departmental inquiry nor the disciplinary authority served show cause notice upon him along with the inquiry report in order to grant him an opportunity to explain his position. He relies upon the certificate issued on 05.04.2011 by the Fortis Hospital, Mohali, diagnosing that the petitioner suffers from HemiParkinson disease. He relies upon the judgment passed by the Supreme Court in

Krushnakanat B. Parmar v. Union of India and Another (2012) 3 SCC

4059 of 2015, decided on 30.06.2022) and the judgment passed by the co-ordinate Bench of this Court in *Sukhbir Singh v. State of Punjab (Civil Writ Petition No. 18825 of 2015, decided on 09.05.2017)*.

5. This Court, with the able assistance of the learned counsel, has gone through the judgment passed in *Krushnakanat B. Parmar's case (supra)*. In that case, the appellant was working as a Security Assistant. He was found absent from duty. He denied the allegations in response to the charge sheet. He was alleged to be absent for 36 days, 32 days and 234 days, respectively. There was an allegation of bias against his controlling officer. It was alleged by the appellant that he was prevented from signing the attendance register and from attending the office. There was no finding that the appellant had willfully absented from duty. In those facts, the Supreme Court allowed the appeal. Thus, the aforesaid judgment is in the peculiar facts of the case.

6. The learned counsel also relies upon the judgment rendered in *R.K.Sharma's case (supra)*. In that case, the respondent was working as Daftri which was a Grade-IV post. The Division Bench of the High Court, vide the impugned judgment, allowed the writ petition and the Supreme Court was hearing the appeal arising therefrom. In the facts of that case, the Supreme Court, keeping in mind the doctrine of proportionality and with a view to do complete justice between the parties, exercised the powers under Article 142 of the Constitution of India while ordering that the respondent shall be deemed to have compulsorily retired from the service while being entitled to pension, gratuity and the other retiral benefits on the completion of minimum qualifying service. Thus, it is evident that the aforesaid

judgment is also given in the facts of the case.

7. Next, the reliance is placed on the judgment passed in *Sukhbir Singh's case* (*supra*). In that case, the High Court did not find any infirmity in the order passed by the disciplinary authority which was confirmed in appeal while upholding the major punishment of removal from service. However, the Court held that the punishment of removal of service is disproportionate and directed the conversion of the order of removal from service to an order of compulsory retirement. It is evident that the aforesaid judgment is also delivered in the facts of the case.

8. To recapitulate the facts, it is evident that the petitioner, after having served for less than 15 years as a Class-I officer, proceeded on leave for a period of five years. Thereafter, he is alleged to have reported back but never joined. He never chose to file reply to the charge memo. After the report was submitted by the Inquiry Officer which was supplied to him, he did not submit any explanation. During all this while, he never made any attempt to report and come back on duty. It is expected from a Class-I officer, who is in government service, to discharge his duties diligently and regularly. After the period of sanctioned leave has elapsed, he is required to rejoin the duties. He, being a public servant, performs the pivotal duty of discharging the public functions. The petitioner was a Class-I officer. He cannot be treated at par with the employees working on lower classes like Daftri, Security Assistant or Junior Engineer as their nature and importance of work is not comparable. Moreover, it is well settled that the scope of judicial review in the matter of imposition of penalty as a result of the disciplinary proceedings, is limited. The Court can interfere with the

punishment only if the same is shockingly disproportionate to the charges. Reliance in this regard can be placed on the judgment rendered in *Union of India and Another v. S.S.Ahluwalia (2007) 7 SCC 257*.

9. Keeping in view the facts of the case, this Court is of the considered view that the petitioner has failed to make out a case for interference in the exercise of the power of judicial review. Consequently, finding no merit, the writ petition is dismissed.

(Anil Kshetarpal)
Judge

March 03, 2023
“DK”

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