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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-25127-2023

Date of Decision:13.12.2023

BHARPOOR SINGH

..... Petitioner

Versus

UNION OF INDIA AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Nikhil Anand, Advocate
for the petitioner.

Mr. Somesh Gupta, Senior Panel Counsel
for the respondents- UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 17.12.2020 (Annexure P-7) whereby petitioner has been compulsorily retired from service, order dated 09.03.2022 (Annexure P-9) whereby statutory appeal of the petitioner has been dismissed and order dated 29.08.2022 (Anneuxre P-12) whereby revision petition has been dismissed.

2. Learned counsel for the petitioner submits that petitioner has been punished on the basis of ocular evidence. There is no witness against the petitioner and he has been punished without any evidence. The punishment awarded is disproportionate to allegations made against the petitioner. The petitioner was having 24 years unblemished service record still he has been awarded stringent punishment which sounds death knell.

3. Learned counsel for the respondents submits that petitioner was awarded punishment on account of his involvement in a corruption case. Proper inquiry was conducted and during the course of inquiry, the person, from whom money was demanded by petitioner and two other police officials, appeared before the inquiry officer as PW-2 and he disclosed the entire incident. He identified the petitioner. Similarly Mangat Ram @ Sonu appeared as PW-3 and identified the petitioner. He also confirmed the alleged incident.

4. I have heard the arguments of learned counsel for the parties and perused the record.

5. From the perusal of record, it comes out that petitioner and two other police officials demanded a sum of Rs.40,000/- from Jagdeep Singh son of Daljit Singh. The money was paid to Inspector Anuj Kumar Varun who on account of complaint returned the said amount to Jagdeep Singh. Inspector Anuj Kumar Varun has been dismissed from service and petitioner has been compulsorily retired. The petitioner is part of a disciplined armed force. Integrity and discipline are two paramount consideration for being part of armed force.

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. 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.”

7. The petitioner has been compulsorily retired along with all retiral benefits. The witnesses appeared before enquiry officer and confirmed the demand of bribe. The petitioner being part of armed force was bound to maintain discipline and integrity. This Court does not find that punishment awarded was disproportionate to the alleged misconduct.

8. In the wake of law laid down by Supreme Court as well as above discussion and findings, this Court is of the considered opinion that the present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

13.12.2023
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>