

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

CWP-37381-2018

Date of reserved:-05.10.2023

Date of Pronouncement: 19.10.2023.

Pardeep Kumar

...Petitioner.

Versus

Union of India and others

...Respondents.

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

.....

Argued by :Mr. Rohit Seth, Advocate for the petitioner.

Dr. Anand Bishnoi, Addl. Standing Counsel, U.T., Chandigarh
and Mr. Prateek Mahajan, Sr. Panel Counsel
for U.T., Chandigarh for respondents No.2 to 5.

SUKHVINDER KAUR, J.

Prayer in the instant writ petition is for the issuance of a writ in the nature of certiorari for quashing the impugned order dated 20.11.2018 vide which Original Application No.060/00938/2016 filed by the petitioner under Section 19 of the Administrative Tribunals Act, 1985 was dismissed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short, "the Tribunal"). A further prayer has been made for quashing of charge sheet dated 21.01.2013, Enquiry report dated 25.03.2013, order dated 02.07.2015 passed by Disciplinary Authority, order dated 03.09.2015 passed by Appellate Authority, order dated 04/09.11.2015 passed by

Revisional Authority, being illegal, against facts, punitive, perverse, arbitrary and in violation of Article 311 of Constitution of India. Further direction to the respondent has also been sought to grant all benefits to the petitioner as if no punishment order was ever passed against him, with consequential benefits of arrears of pay and allowances with interest thereon @ 18% P.A. till realization of the payment.

2. Facts, in brief, are that the petitioner joined as Constable U.T., Police Chandigarh on 01.05.2011. During the intervening night of 25/26.07.2012, the petitioner along with Constable Rajesh Kumar and volunteer Dalel Singh was on night patrolling duty in Sector-20 Chandigarh. At about 2.00 A.M., on receiving wireless message ASI Balram Singh reached at Aroma Light Point and found ASI Gurdeep Singh alongwith one person namely Divesh Parkash Rana present there. Divesh Parkash Rana alleged that while he went to drop his friend Kavita Katoch at her PG accommodation at Sector-20, Chandigarh, they were stopped and harassed by a police patrolling party in Sector-20 and the police party took Rs.300/- from him. As his friend was very scared and started weeping, he reported to the PCR vehicle stationed at Aroma Light Point, Sector-22. Thereafter, he alongwith the police party were taken to police station Sector-19 and Rs.300/- were returned to Divesh Parkash Rana. Departmental Inquiry was initiated against the petitioner and Constable Rajesh Kumar.

Summary of allegations dated 24.09.2012 was issued by the respondents levelling therein allegation of harassing the complainant and taking Rs.300/- from him, which was followed by Charge-Sheet dated 21.01.2013, to which reply was submitted by the petitioner by denying the

allegations. Enquiry proceedings were completed vide Inquiry Report dated 25.03.2013 proving the charges against the petitioner as well as Rajesh Kumar. Thereafter, while agreeing with the findings of Inquiry Officer show cause notice dated 02.07.2013 was issued by the disciplinary authority. Disciplinary authority passed order dated 02.07.2015, vide which punishment of stoppage of fifteen annual increments with permanent effect was imposed upon the petitioner. Feeling aggrieved against the order dated 02.07.2015, petitioner preferred an appeal dated 28.07.2015 under Rule 16.29 of Punjab Police Rules, however, the said appeal was rejected by the appellate authority vide order dated 02.09.2015 with modification in the punishment of stoppage of ten annual increments with permanent effect. Petitioner filed revision petition under Rule 16.32 of Punjab Police Rules, which was also rejected by the revisional authority, vide order dated 04.11.2015. The mercy petition dated 01.12.2015 filed by petitioner was also rejected by Home Secretary, vide order dated 19.02.2016.

Challenging the charge-sheet and punishment orders culminating therefrom, petitioner filed O.A. No.060/00938/2016 before the Tribunal. The Tribunal dismissed the above referred Original Application, vide impugned order dated 20.11.2018, resulting in filing of present writ petition. In the writ petition it has been alleged that the impugned order has been passed by ignoring the illegalities and irregularities committed by the departmental authorities and the Tribunal has failed to appreciate the issue in the right perspective, in the light of the fact that findings of Enquiry Officer proving the charge sheet against the petitioner are perverse. The impugned order dated 20.11.2018 is erroneous, against the facts and has been passed without appreciating the law and evidence on record and is

liable to be set aside on the following grounds:-

- (a) Charge-sheet did not disclose whether proceedings were initiated for minor or major penalty.
- (b) Petitioner who had rendered service for one year only, was put on duty alongwith Constable Rajesh Kumar, who had 19 bad entries in service record of 21 years. Thus, any person deployed on duty was prone to suffer on account of misconduct of a history sheetter and therefore, petitioner should not have been deputed with such a person on public duty.
- (c) All witnesses including complainant, ASI Balram Singh, SHO Harjit Kaur and Volunteer Dalel Singh deposed against Constable Rajesh Kumar affirming that he had demanded and took money and misbehaved with complainant and none of the said witnesses uttered a single word against the petitioner. Therefore, petitioner could not have been granted equal punishment as given to Rajesh Kumar.
- (d) The affidavit dated 26.10.2012 submitted by the petitioner during the enquiry to drop proceedings against him and affirming charges against Constable Rajesh Kumar and the other documents were totally overlooked and charge was proved against the petitioner in a perverse manner.
- (e) Learned Tribunal declared the petitioner as co-accused holding him equally responsible as he was on duty with Constable Rajesh Kumar as a team. But third Volunteer Dalel Singh was not proceeded against despite the fact that he was also in the police party at the relevant time.

(f) Impugned orders are blatantly illegal in view of the law laid down by Hon'ble Supreme Court that in case where there is no evidence on record to prove the charge the findings are perverse.

(g) Authorities have mechanically rejected the representation, appeal and revision of petitioner without application of mind.

The petitioner prayed for the relief as detailed in para No.17 of the writ petition.

3. In their short reply filed by respondents No.1 to 5, it has been alleged that with regard to the incident in question, complainant Divesh Parkash Rana made a complaint and after considering the grave misconduct on the part of petitioner, a regular departmental enquiry was ordered, vide order dated 12.09.2012. The Enquiry Officer submitted his findings holding the petitioner and Constable Rajesh Kumar guilty of charges. Consequently, show cause notice dated 02.07.2013 was served upon the petitioner proposing the punishment of dismissal from service. After considering the reply submitted by the petitioner and after affording an opportunity of hearing, the Disciplinary Authority i.e. S.S.P., U.T., Chandigarh, awarded punishment of stoppage of 15 annual increments with permanent effect, vide order dated 02.07.2015. The appeal preferred by the petitioner before Deputy Inspector General of Police, U.T. Chandigarh, under Rule 16.29 of Punjab Police Rules, as applicable to Chandigarh, was partly accepted by the appellate authority, vide order dated 02.09.2015 and order dated 02.07.2015 granting a punishment of stoppage of 15 annual increments with permanent effect was modified to the extent of stoppage of 10 annual

increments with permanent effect.

Thereafter, assailing the order of the appellate authority, the petitioner preferred a revision petition under Rules 16.32 of Punjab Police Rules, which was dismissed vide order dated 04.11.2015. Feeling dissatisfied, petitioner filed a Mercy Petition, which was also dismissed by the Home Secretary, Chandigarh, vide order dated 19.02.2016.

Thereafter, petitioner approached the Tribunal, by preferring Original Application, challenging charge sheet, enquiry report, show cause notice, orders of disciplinary authority, appellate authority, revisional authority and the Home Secretary. A short reply was filed to the Original Application by the respondents. After hearing counsel for the parties, vide order dated 20.11.2018, the Original Application was dismissed.

Respondents submitted that under the orders of the competent authority i.e. Senior Superintendent of Police, Chandigarh, a regular departmental enquiry was conducted and the enquiry officer after conducting a full fledged enquiry proved the charges of misconduct against the petitioner. Charge sheet was issued to petitioner with the proposed action of dismissal from service, whereas punishment of stoppage of 15 annual increments with permanent effect was imposed upon him. However, the said punishment was modified to the extent of stoppage of 10 annual increments with permanent effect. It has been averred that misconduct has been duly proved against the petitioner and as such imposition of punishment is justified. The act and conduct of petitioner tantamounts to grave misconduct, dereliction in duty and unbecoming of a police officer being a member of disciplined force. Thus, petitioner is not entitled to any relief and as such the instant petition be dismissed.

4. Counsel for the parties have been heard and the record has been perused with their able assistance.

5. The first contention canvassed by counsel for the petitioner is that at that point of time petitioner had rendered only one year of service, when he was put on duty along with Constable Rajesh Kumar, who had 19 bad entries in the service record of 21 years, so any person deployed on duty along with him was prone to suffer on account of his misconduct being a history sheeter and authorities should not have put such a person on public duty. All the witnesses during the enquiry, including the complainant, DP Rana, ASI Balram Singh, who got the first hand information from the complainant, SHO Harjit Kaur, the third incumbent deployed on duty with the petitioner namely Volunteer Dalel Singh had deposed against Constable Rajesh Kumar that only he had demanded and taken money and had misbehaved with the complainant, but none of the witnesses deposed against the petitioner. So the same parameters were not to be adopted by the authority, to punish the petitioner and Constable Rajesh Kumar. But all these depositions have been totally overlooked while proving the charge against the petitioner in a perverse manner. He has further contended that the Tribunal has wrongly declared the petitioner as co-accused by stating that he was equally responsible since he was on duty alongwith Constable Rajesh Kumar as a team. It has also been submitted that the third Volunteer Dalel Singh, who was also alongwith them at the relevant time, had not been proceeded against. He has further argued that the report of the Enquiry Officer is not based upon evidence on record and the authorities have mechanically rejected the representation, appeal and revision of the petitioner without application of mind. While relying upon **Union of India**

Vs. K.A. Kittu and others, 2001, SCC (LO& S) 8; Kuldeep Singh Vs. The Commissioner of Police and others, JT 1998 (8) SC 603 and *Bhagat Ram Vs. State of Himachal Pradesh, 1983 SCC (L&S) 342*, it has been contended that the Court can interfere in conclusions if there was no evidence or where findings recorded are such which could not have been reached by an ordinary prudent man or are perverse. He has contended that the impugned orders are blatantly illegal in the light of aforesaid law settled by Hon'ble Supreme Court and prayed that the present writ petition may be allowed and consequently all the impugned orders be set aside.

6. Per contra, counsel for the respondents has contended that under the orders of competent authority i.e. Senior Superintendent of Police, Chandigarh, a regular departmental enquiry was conducted and the Enquiry Officer after conducting the full-fledged enquiry by following proper procedure held that charges of misconduct against the petitioner are proved. In view of the same charge sheet was issued to the petitioner with a purposed action of dismissal from the service, whereas a punishment of stoppage of 15 increments with permanent effect was imposed. The appeal filed by the petitioner was rejected while modifying punishment of stoppage of 10 annual increments with permanent effect. The revision petition filed by the petitioner against the order of the Appellate Authority was dismissed and the mercy petition filed before the Home Secretary, Chandigarh, was also dismissed. The Original application filed before the Tribunal, challenging the aforesaid orders has also been dismissed. He has urged that as the misconduct was duly proved against the petitioner so the imposition of punishment is justified. The act and conduct on the part of the petitioner tantamounts to grave misconduct, dereliction in duty and unbecoming of

police officer, being a member of disciplined force. He has contended that the orders passed by the authorities below and order passed by the Tribunal are justified and have been passed in its right perspective and the present writ petition is liable to be dismissed.

7. The entire edifice of the case of the petitioner is that it was only Constable Rajesh Kumar who had taken money from Daves Rana and had misbehaved with the couple and later on he returned said sum of Rs.300/- which had been taken by him from Daves Rana. But the Tribunal has rightly held that the petitioner and Constable Rajesh Kumar were doing duty together, so the complaint made by Daves Rana regarding misbehavior and illegal gratification, was also to be taken as a complaint qua the petitioner also. It has been rightly observed, that this argument of the petitioner that he knew of the demand made for money, but had no alternative except to abide by the order of his senior, does not absolve him of being a co-participant in the harassment and demand of illegal gratification from a member of the public. Being a member of a disciplined force, he was duty bound to maintain integrity at every step of his service, even when he was having only one year service at the relevant time.

8. In **Union of India and others Vs. P. Gunasekaran, 2015 AIR (Supreme Court) 545**, the High Court set aside the order of the Central Administrative Tribunal, interfered with even findings of the Enquiry Officer, set aside the punishment and directed reinstatement with backwages and all the service benefits. The Union of India aggrieved against the same went to Supreme Court. The relevant finding given by the Hon'ble Apex Court in this context is extracted below:-

“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 at 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.”*

In many subsequent decisions of the Hon'ble Apex Court again these principles have been consistently followed and it has been held that while re-appreciating evidence, High Court cannot act as an Appellate Authority, in the disciplinary proceedings.

9. In **State of Karnataka and another Vs. N. Gangaraj, 2020 (2) S.C.T. 170**, the Hon'ble Apex Court held as under:-

“The Disciplinary Authority has taken into consideration the evidence led before the IO to return a finding that the charges levelled against the respondent stand proved.

We find that the interference in the order of punishment by the Tribunal as affirmed by the High Court suffers from patent error. The power of judicial review is confined to the decision-making process. The power of judicial review conferred on the constitutional court or on the Tribunal is not that of an appellate authority.”

10. In **State of Karnataka and another** case (supra) the Hon'ble Apex Court placed reliance upon a three Judge Bench judgment in **State of Andhra Pradesh and others Vs. Sree Rama Rao, AIR 1963 Sc, 1723**, wherein it was held that “High Court is not a Court of appeal over the decision of the authorities holding a departmental enquiry against a public servant. It is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure

prescribed in that behalf and whether the rules of natural justice are not violated”.

11. Again a three Judge Bench judgment in case **B.C. Chaturvedi Vs. Union of India and others (1995) 6 SCC 749**, held that “power of judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the court. The Court/Tribunal in its power of judicial review does not act as an appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence”.

12. Now coming to the present case, a regular departmental enquiry was ordered against the petitioner and Constable Rajesh Kumar. Enquiry Officer held the petitioner and Constable Rajesh Kumar guilty of the charges. While agreeing with the findings of the Inquiry Officer, S.S.P. Chandigarh served show cause notice proposing punishment of dismissal from service. Then S.S.P. (Security) being the disciplinary authority of the applicant, imposed punishment of stoppage of 15 annual increments with permanent effect. The petitioner filed appeal before the Deputy Inspector General of Police and the punishment was reduced to stoppage of 10 annual increments with permanent effect. The Revisional Authority also upheld the punishment of the Appellate Authority. It has been held by the Enquiry Officer and other authorities that conduct of petitioner reflected lack of integrity. This view has also been endorsed by the Tribunal.

13. Thus, it is abundantly clear that the petitioner was afforded sufficient opportunities to present his case in the defence. The perusal of

order dated 03.09.2015 of the Appellate Authority, Deputy Inspector General of Police, Chandigarh, reveals that it has been specifically mentioned therein that “the appellant has been afforded ample and substantial opportunity to present his case in defence. No procedural irregularities have been found in the conduct of enquiry and the findings as well as punishment orders stands supported and substantiated by the evidence on record. There has been full compliance with the principles of natural justice, equity and fair play while dealing with him departmentally. There was no infraction of any rule while conducting departmental enquiry.” The Tribunal has rightly observed that thus the Appellate Authority was convinced that the no procedural irregularities were committed during conducting of enquiry and findings of the department were supported and substantiated by the evidence which was produced during the enquiry and there was full compliance of principles of natural justice, equity and fair play in the department proceedings.

14. The present case cannot be treated as a case of no evidence qua appellant-Pardeep Kumar. In the enquiry report a reference has been made to statement of Kavita, wherein she identified both C-Pardeep Kumar and C-Rajesh Kumar as those two persons who alongwith another police personnel had harassed her and misbehaved with her on that night. The Tribunal has rightly held that an ordinary and prudent man could come to conclusion that when put on duty as a team, the team is responsible for the consequences of the incident or the complaint raised by a public member on any action by the team. The evidence on record would show that the applicant was working as a team with Constable Rajesh Kumar and in the event of demanding illegal gratification or harassment, he would be equally

responsible for the action of the team. The Tribunal has further rightly held that the attempt of petitioner to disassociate himself from the event, when he was a member of the patrolling party appears to be a poor defence and not substantiated in the inquiry proceedings.

15. It has also been rightly observed by the Tribunal that a perusal of the allegations proved and the penalty imposed upon the petitioner will show, that the same is not excessive and it cannot be said that it pricks the conscience of a prudent man, considering the fact that a protector of law chose to violate the law himself, by demanding illegal gratification and causing harassment.

16. So when the enquiry has been held according to the prescribed procedure, there was no violation of principles of natural justice in conducting the proceedings and there is no material regarding mala fide on the part of the authorities and the punishment imposed is not excessive, then no interference in the impugned orders is required by this Court.

17. So far as case law cited by learned counsel for the petitioner is concerned, the same is not applicable to the facts of the case in hand. In K.A. Kittu's case (supra) CAT while exercising powers of judicial review held, that there were contradictory findings of the Enquiry Officer; motive was based on 'no evidence' and there was no evidence at all regarding suspicion and during the period of respondent's posting there was no felling of the trees and no loss of revenue.

18. In Kuldeep Singh's case (supra) the original complainants were not examined and blame for their non-availability was laid on the appellant, despite the fact that he was also under suspension. It was held that there was no basis or material on record upon which Enquiry Officer relied upon

to come to conclusion that the appellant was responsible for their disappearance.

19. In Bhagat Ram's case (supra) the appellant was not afforded a reasonable opportunity to defend himself and accordingly the enquiry and consequential order of removal from service were vitiated.

20. As such, the case law cited by learned counsel for the petitioner is of no help to the petitioner.

21. Therefore, we do not find any merit in the writ petition and it is accordingly dismissed.

22. All pending applications, if any, stand disposed of accordingly.

(DEEPAK SIBAL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

19.10.2023

Komal

Whether speaking/reasoned? : Yes/ No

Whether reportable? : Yes/ No