

CWP-15534 of 1995

2024:PHHC:131773



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

CWP-15534 of 1995

Reserved on: 19.09.2024

Pronounced on: 01.10.2024

Jagtar Singh

.....Petitioner

Versus

Punjab Seed Corporation and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Yugank Goyal, Advocate,
for the petitioner.

Mr. Y.P. Singla, Advocate,
for respondents No.1 to 3.

Mr. Rajesh Sehgal, Addl. A.G., Punjab.

NAMIT KUMAR, J.

1. The petitioner has invoked the jurisdiction of this Court by filing the instant petition under Articles 226/227 of the Constitution of India, seeking a writ of *certiorari*, quashing the order of compulsory retirement of the petitioner dated 25.05.1994 and in the alternative a writ in the nature of *mandamus*, directing the respondents to give all retiral benefits from the date of suspension till 25.05.1994.

2. Brief facts, as have been pleaded in the petition, are that petitioner was appointed as Bulldozer Operator in the Punjab Land Development and Reclamation Corporation Limited (hereinafter referred to as 'the Corporation') on 11.08.1977. The petitioner was charge-sheeted on 17.12.1990 on the following charges: -



- (i) *On 30.05.1990 he had interrupted his superiors at the time of interview for the appointment of Junior Operators-cum-Helper and while doing so he was drunk.*
- (ii) He was habitual of drinking during working hours.
- (iii) *Remaining absent from duty.*
- (iv) *Non-keeping proper stock of diesel.*
- (v) *Non-obeying the orders of his superiors*
- (vi) *At the time of handing over charge of bulldozer No.23 spares were short.*

After enquiry, petitioner was held guilty of misbehaving with the committee members and for disturbing the office administration. Thereafter, petitioner was served show-cause notice dated 29.07.1992 (Annexure P-4) as to why he should not be dismissed from service. Petitioner filed reply to the show-cause notice stating that he went to the Manager (Machinery) with respect to the early repair of the machinery and no interview was being held during that period; neither any candidate was present nor any peon was posted at the gate of the office and the petitioner entered the office after due permission. Petitioner never mis-behaved with anybody nor violated the discipline of the Corporation. After considering the reply of the petitioner, he was dismissed from service vide order dated 29.09.1992 (Annexure P-6). Aggrieved by the order of dismissal, petitioner filed an appeal before the Board of Directors of the Corporation. Vide resolution dated 30.03.1993, the Board of Directors nominated Sh. B.K. Srivastva, IAS, to hear the appeal of the petitioner. Sh. B.K. Srivastva, IAS, vide order



would be more humane if the petitioner is retired compulsorily. It was further ordered that petitioner be retired compulsorily from the date of dismissal and all dues be paid to him within one month. The matter was again placed before the Board of Directors on 01.02.1994. The Board resolved that the petitioner be compulsorily retired instead of dismissed and also accepted the report of Sh. B.K. Srivastva, IAS. Consequently, vide order dated 25.05.1994 (Annexure P-10) passed by the Managing Director, petitioner was ordered to be compulsorily retired with effect from 30.09.1992, with all retirement benefits to be paid by the Corporation except the period of his suspension for which nothing more was ordered to be paid except subsistence allowance already paid to him. However, petitioner was deprived of arrears of suspension period. It is further pleaded that in spite of decision of the Board of Directors, no money was paid to the petitioner. Hence, the present writ petition.

3. Pursuant to notice of motion, reply on behalf of the respondents has been filed. It has been averred that petition is not maintainable as it is the result of an after-thought. Proper enquiry, as envisaged under the relevant rules and regulations of the respondent-Corporation, was conducted. There is no allegation of the petitioner that the enquiry was not conducted properly. The petitioner under the influence of intoxication barged into the room of the interview committee and demanded that candidate sponsored by him be appointed as JOCH (Junior Operator-cum-Helper). The petitioner broke the discipline of the Corporation and misbehaved in a shabby



manner with the officers of the interview committee. Petitioner was found guilty on account of charge No.1 and he was duly served with the show-cause notice regarding the punishment to be awarded to him.

4. Learned counsel for the petitioner has contended that the petitioner was wrongly dismissed from service by relying upon the report of the enquiry officer. He further contended that the appellate authority has erred in compulsorily retiring the petitioner from service. He further contended that the dismissal order once set aside not being proportionate to the gravity of charge, cannot be given a new name in the form of compulsory retirement. He further contended that the petitioner has wrongly been deprived of the salary of the suspension period without giving any opportunity of hearing to him. He further contended that statement of Sh. Khuswant Singh, Manager, Machinery and Custom was wrongly relied upon by the enquiry officer as he was never cross-examined.

5. *Per contra*, learned counsel for respondents No.1 to 3 has contended that proper enquiry as envisaged under the relevant rules and regulations was conducted. The petitioner was found guilty of misbehaving with the members of the interview committee and for disturbing the office administration. Taking a lenient view by the appellate authority, he was ordered to be compulsorily retired from service, which does not call for any interference by this Court. He further contended that due to heavy financial losses, Corporation was closed w.e.f. 30.11.2003 vide order dated 29.10.2003 passed by the Principal Secretary, Department of Labour, Punjab, Chandigarh. He



further submitted that all the admissible dues have already been released to the petitioner on 18.09.2024. Therefore, present writ petition is liable to be dismissed.

6. I have heard learned counsel for the parties and perused the record.

7. The matter was admitted on 14.05.1996. Vide order dated 22.08.2019, Punjab Seed Corporation was impleaded as respondent No.1 being successor-in-interest in place of Punjab Land Development and Reclamation Corporation Limited as the same was wound up w.e.f. 30.11.2003.

8. Out of above-referred charges, petitioner was found guilty of charge No.1 to the effect that he had interrupted his superiors at the time of interview for the appointment of Junior Operators-cum-Helper. Perusal of the record shows that all the members of the committee were duly cross-examined and they have stated that the petitioner forcibly entered the committee room, misbehaved with the members of the interview committee and approached them for selection of some candidate. After considering the enquiry report, punishing authority vide order dated 29.09.1992 ordered dismissal of the petitioner from service. However, on appeal, the appellate authority taking a lenient view converted the order of dismissal into compulsory retirement of the petitioner, which is a valid order and does not call for any interference by this Court.

9. The Hon'ble Supreme Court in *State of Andhra Pradesh and others v. S. Sree Rama Rao, AIR 1963 Supreme Court 1723* has



held that the High Court is not a Court of appeal which examines the merits of the findings recorded in the departmental inquiry and the power of judicial review is confined to; whether the inquiry was held by a competent authority; according to the procedure prescribed and whether rules of natural justice have been followed.

10. The Hon'ble Supreme Court in ***Union of India and another v. P. Gunasekaran, 2015(1) SCT 5*** while considering the scope of interference under Articles 226/227 of the Constitution of India has held 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;*

2024:PHHC:131773



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.

*14. In one of the earliest decisions in **State of Andhra Pradesh and others v. S. Sree Rama Rao, AIR 1963 Supreme Court 1723**, many of the above principles have been discussed and it has been concluded thus :*

"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities

2024:PHHC:131773



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. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed



before the High Court in a proceeding for a writ under Article 226 of the Constitution."

15. In **State of Andhra Pradesh and others v. Chitra Venkata Rao, (1975)2 SCC 557**, the principles have been further discussed at paragraph-21 to 24, which read as follows :

"21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court. Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court 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. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High



Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

*22. Again, this Court in **Railway Board, representing the Union of India, New Delhi v. Niranjana Singh, (1969) 3 SCR 548** said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In Niranjana Singh case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in compelling the shut-down of an air compressor at*



about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on



the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan.

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence, reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

*These principles have been succinctly summed-up by the living legend and centenarian Justice V. R. Krishna Iyer in **State of Haryana and another v. Rattan Singh, (1977) 2 SCC 491**. To quote the unparalleled and inimitable expressions:*

"4. in a domestic enquiry the strict and sophisticated rules of evidence under the Indian



Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fair play is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ..."

11. To the similar effect is the judgment of the Hon'ble Supreme Court in ***Central Industrial Security Force and others v. Abrar Ali, 2017(1) SCT 682*** wherein it has been held as under: -

"8. Contrary to findings of the Disciplinary Authority, the High Court accepted the version of the Respondent that he fell ill and was being treated by a local doctor without assigning any reasons. It was held by the Disciplinary Authority that the Unit had better medical facilities which could have been availed by the Respondent if he was really suffering from illness. It was further held that the delinquent did not produce any evidence of treatment by a local doctor. The High Court should not have entered into



*the arena of facts which tantamounts to re-appreciation of evidence. It is settled law that re-appreciation of evidence is not permissible in the exercise of jurisdiction under Article 226 of the Constitution of India. In **State Bank of Bikaner and Jaipur v. Nemi Chand Nalwaiya reported in 2011(2) S.C.T. 782 : 2011(3) Recent Apex Judgments (R.A.J.) 28 : (2011) 4 SCC 584**, this Court held as follows:*

*"7. It is now well settled that the courts will not act as an appellate court and reassess the evidence led in the domestic inquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore, courts will not interfere with findings of fact recorded in departmental enquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or finding, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations. (Vide **B.C. Chaturvedi v. Union of India, 1996(1) S.C.T. 617 : (1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44, Union of India v. G. Ganayutham, 1997(4) S.C.T. 214 :***



(1997) 7 SCC 463 : 1997 SCC (L&S) 1806, Bank of India v. Degala Suryanarayana, 1999(3) S.C.T. 669 : (1999) 5 SCC 762 : 1999 SCC (L&S) 1036 and High Court of Judicature at Bombay v. Shashikant S. Patil."

The said view has recently been reiterated by the Hon'ble Supreme Court in ***Deputy General Manager (Appellate Authority) and others v. Ajai Kumar Srivastava, 2021(1) SCT 285*** and in the said judgment it has been held as under: -

*"23. The power of judicial review in the matters of disciplinary inquiries, exercised by the departmental/appellate authorities discharged by constitutional Courts under Article 226 or Article 32 or Article 136 of the Constitution of India is circumscribed by limits of correcting errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice and it is not akin to adjudication of the case on merits as an appellate authority which has been earlier examined by this Court in **State of Tamil Nadu v. T.V. Venuaopalan, 1994(6) SCC 302** and later in **Government of T.N. and Another v. A. Rajapandian, 1995(1) SCC 216** and further examined by the three Judge Bench of this Court in **B.C. Chaturvedi v. Union of India and Others, 1995(6) SCC 749** wherein it has been held as under:-*

"13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary enquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed



*before the Court/Tribunal. In **Union of India v. H.C. Goel [(1964) 4 SCR 718]** this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."*

24. *It has been consistently followed in the later decision of this Court in **Himachal Pradesh State Electricity Board Limited v. Mahesh Dahiya, 2017(1) SCC 768** and recently by the three Judge Bench of this Court in **Pravin Kumar v. Union of India and Others, 2020(9) SCC 471.***

25. *It is thus settled that the power of judicial review, of the Constitutional Courts, is an evaluation of the decision-making process and not the merits of the decision itself. It is to ensure fairness in treatment and not to ensure fairness of conclusion. The Court/Tribunal may interfere in the proceedings held against the delinquent if it is, in any manner, inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached or where the conclusions upon consideration of the evidence reached by the disciplinary authority is perverse or suffers from patent error on the face of record or based on no evidence at all, a writ of certiorari could be issued. To sum up, the scope of judicial review cannot be extended to the examination of correctness or reasonableness of a decision of authority as a matter of fact.*

26. *When the disciplinary enquiry is conducted for the alleged misconduct against the public servant, the Court is*



to examine and determine: (i) whether the enquiry was held by the competent authority; (ii) whether rules of natural justice are complied with; (iii) whether the findings or conclusions are based on some evidence and authority has power and jurisdiction to reach finding of fact or conclusion.

27. It is well settled that where the enquiry officer is not the disciplinary authority, on receiving the report of enquiry, the disciplinary authority may or may not agree with the findings recorded by the former, in case of disagreement, the disciplinary authority has to record the reasons for disagreement and after affording an opportunity of hearing to the delinquent may record his own findings if the evidence available on record be sufficient for such exercise or else to remit the case to the enquiry officer for further enquiry.

28. It is true that strict rules of evidence are not applicable to departmental enquiry proceedings. However, the only requirement of law is that the allegation against the delinquent must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravity of the charge against the delinquent employee. It is true that mere conjecture or surmises cannot sustain the finding of guilt even in the departmental enquiry proceedings.

29. The Constitutional Court while exercising its jurisdiction of judicial review under Article 226 or Article 136 of the Constitution would not interfere with the findings of fact arrived at in the departmental enquiry proceedings except in a case of malafides or perversity, i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and



with objectivity could have arrived at that findings and so long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained.”

12. Needless to mention here that all the admissible dues have already been released to the petitioner on 18.09.2024.

13. In view of the above, finding no merit in the present writ petition, the same is dismissed.

01.10.2024
R.S.

(NAMIT KUMAR)
JUDGE

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