



361

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

**CWP-16980-2001 (O&M)
Date of Decision: 07.05.2024**

HUKAM CHAND

..... Petitioner

*Versus***STATE OF PUNJAB AND OTHERS**

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Ashwani Talwar, Advocate
for the petitioner.

Mr. Pawan Kumar, DAG, Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of:

(i) Order dated 20.04.1999 (Annexure P-1) whereby one increment with cumulative effect was ordered to be stopped.

(ii) Order dated 24.11.1999 (Annexure P-2), order dated 10.07.2000 (Annexure P-3) and order dated 19.04.2001 (Annexure P-4) whereby appeal, revision as well as mercy petition preferred by the petitioner has been rejected.

2. The petitioner was posted with Government Railway Police as Head Constable during 1996. He on 08.06.1996 found a dead body on railway lines. He, without getting postmortem conducted, sought approval of SDM to handover dead body to family members of the deceased. Father of the deceased lodged a complaint that his son has been



murdered. The petitioner on account of failure to get postmortem conducted came to be suspended vide order dated 17.09.1996. An Enquiry was conducted. The Enquiry Officer exonerated him from all the charges, however, disciplinary authority issued show cause notice dated 17.03.1998 calling upon him to put-forth his stance. The disciplinary authority disagreed with enquiry report and vide order dated 26.04.1999 imposed penalty of forfeiture of one year service on permanent basis. The petitioner unsuccessfully preferred appeal and revision before appellate/revisionary authority.

3. Mr. Ashwani Talwar, Advocate submits that Enquiry Officer had found petitioner innocent and disciplinary authority without reason awarded punishment of forfeiture of one year service with cumulative effect.

4. Mr. Pawan Kumar, DAG, Punjab submits that disciplinary authority as per Rule 9 of Punjab Civil Services (Punishment and Appeal) Rules, 1970 was not bound to accept report of Enquiry Officer. The disciplinary authority appreciated the evidence and on the basis of evidence came to a conclusion that petitioner is liable to be punished. A show cause notice was issued to him and after following due procedure penalty of forfeiture of one year service was imposed. The appellate as well as revisionary authority has duly considered submissions of the petitioner.

5. I have heard the arguments of both sides and with the able assistance of learned counsels have perused the record.

6. From the perusal of record, it comes out that petitioner found a dead body on railway lines. He did not think it appropriate to get



postmortem conducted. He preferred to move an application before SDM to handover the dead body to family members of the deceased without postmortem. He is trying to deflect from his responsibility on the ground that permission was granted by SDM. The fact that SDM has granted permission does not exonerate him from his responsibility.

7. It is settled proposition of law that scope of interference at High Court level against departmental proceedings is very limited. High Court is not supposed to re-appreciate evidence led during the course of departmental enquiry. High Court while exercising its jurisdiction under Article 226 of the Constitution of India can examine whether there is violation of any prescribed procedure or there was *mala fide* on the part of authorities or the official has been victimized.

A two-judge Bench of Supreme Court in *Union of India and others vs. Subrata Nath, 2022 LiveLaw (SC) 998* while adverting 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 enquiry, 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.”

X

X

X

X

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 reconsider 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.”

8. In the case in hand, this Court finds that the act and conduct of the petitioner does not warrant leniency. There is no illegality in the impugned order. The respondent has followed due procedure and petitioner was granted reasonable opportunity to put forth his stand.

9. In the wake of above discussion and findings, the present petition deserves to be dismissed and accordingly dismissed.

10. Pending misc. application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

07.05.2024
Ali

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