

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
Neutral Citation No. 2024:PHHC:048247-DB

(116) LPA-813-2024 (O&M)
Decided on : 09.04.2024

Amit Kumar YadavAppellant(s)
Versus
State of Haryana and anotherRespondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI

Present:- Mr. Sunil K. Nehra, Advocate for the appellant.

G.S. Sandhawalia, Acting Chief Justice (Oral)

Consideration in the present letters patent appeal is sought of the order dated 21.02.2024 passed by the learned Single Judge in CWP-3961-2024, whereby he refused to quash the inquiry report dated 05.12.2023 (Annexure P-7), whereby adverse findings have been recorded against the appellant.

Counsel for the appellant has tried to convince us that the Inquiry Officer had proceeded with haste as such and enough effective opportunities were not given to produce his defence and also to cross-examine the departmental witnesses.

The learned Single Judge has noticed the fact that the appellant was involved in FIR No.1 dated 04.01.2022 which was registered against him under Section 7 of the Prevention of Corruption Act, 1988, while working as Naib Tehsildar. Keeping in view his arrest on 18.01.2022, he was suspended on 20.01.2022 and, thereafter, granted bail on 15.03.2022, after the challan had been submitted. The necessary charge-sheet as such was issued on 19.09.2022 (Annexure P-2) under Rule 7 of the Haryana Civil Services (Punishment and

Appeal) Rules, 2016 and, thereafter, the Inquiry Officer was appointed on 12.06.2023 (Annexure P-3). The learned Single Judge has relied upon the principle that interference in the disciplinary proceedings is very limited. The inquiry report had already been submitted by the Inquiry Officer and it is for the punishing authority to take a call, since comments had already been submitted. Resultantly he also rejected the prayer that the disciplinary proceedings be kept in abeyance, keeping in view the law which is cited in the judgment of the Apex Court in **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd., AIR 1999 SC 1416** and **Eastern Coalfields Limited and others vs. Rabindra Kumar Bharti, 2022 (12) SCC 390**. Resultantly, it was noticed that witnesses had already been examined and the writ petitioner had failed to participate in the proceedings and was proceeded *ex parte*. It was noticed that the appellant had been allowed to take the assistance of an Advocate by the department as to hold free and fair inquiry and he had got the proceedings adjourned on one pretext and other raising a plea of ill health. In such circumstances, the learned Single Judge did not interfere.

We are of the considered opinion that the reasoning of the learned Single Judge does not suffer from any infirmity. It is settled principle that under Article 226 of the Constitution of India, the Writ Court will not take over the role of the Inquiry Officer, specially keeping in view the fact that there is no malafide as such alleged on any of the superior officers, since only the Inquiry Officer has been arrayed as a party. Reliance can be placed upon the judgment of the Apex Court in **State of Punjab Vs. V.K. Khanna, 2001 (2) SCC 330**, wherein it was held as under:

“There must be a positive evidence available on record in order to decry an administrative action on the ground of malafides and

arbitrariness. The ill will or spite must be well pronounced and without which it would be not only unfair but patently not in conformity with the known principles of law. On a scrutiny of the files as presented to court and the evidence thereon, unfortunately, however, there is no evidence apart from bare allegation of any spite or ill will, more so by reason of the fact that the same involves factual element, in the absence of which no credence can be attributed thereto. Incidentally, be it noted that submissions in support of the appeal have been rather elaborate and in detail but a significant part of which pertain to the issuance of the two notifications spoken hereinabove: the High Court decried the action as being tainted with malice and quashed the chargesheet as being mala fide.”

A perusal of the inquiry report would also go on to show that the inquiry proceedings were concluded by a Chief Engineer (Retd.) from UHBVN, who had been appointed by the Financial Commissioner, Revenue & Addl.Chief Secretary to Government. The first date was fixed as 01.08.2023 by the Inquiry Officer. Thereafter, the matter had been adjourned to 11.08.2023 and then to 23.08.2023. On 11.09.2023 the absence of the appellant was there and *ex parte* proceedings were initiated against him and statement of one witness Rajesh Kumar was recorded.

The cross-examination was deferred with liberty to file an application for setting aside the *ex parte* proceedings. On 03.10.2023, the appellant had appeared and statement of one Nawal Kishore, Inspector (Retd.) had been recorded. The cross-examination had been deferred on the request of the charged officer and the matter was fixed for 25.10.2023. On the said date on account of the alleged poor health, the appellant did not put in appearance and, thereafter, did not put in appearance, which led to the finalization of inquiry report on 05.12.2023. The above sequence of events goes on to show that it is a calculative effort to ensure that the inquiry report be not completed

at the earliest so that action cannot be taken against the government servant who has been charged with allegations of serious misconduct.

Resultantly, keeping in view the settled law, there is no ground to interfere in the well reasoned order of the learned Single Judge and the appeal is hereby dismissed in limine.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

09.04.2024
Naveen

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No