

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2024:PHHC:051538-DB

(103) LPA-2031-2023 (O&M)
Decided on : 18.04.2024

Jai NarainAppellant(s)
Versus
State of Haryana and othersRespondent(s)

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

Present:- Mr. Sanchit Punia, Advocate for the appellant (s).

Mr. Deepak Balyan, Addl. AG, Haryana.

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

CM-5080 & 5081-LPA-2023

Applications for condonation of delay of 182 days in re-filing and 69 days in filing the appeal, are allowed, in view of the averments made in the application, duly supported by affidavit of the appellant. Delay of 182 days in re-filing and 69 days in filing the appeal is condoned.

CMs stand disposed of.

LPA-2031-2023 (O&M)

Consideration in the present letters patent appeal is sought of the order dated 21.12.2022 of the learned Single Judge passed in CWP-9737-2017, whereby the learned Single Judge dismissed the writ petition. Challenge

in the present writ petition was made to the order dated 27.12.2012 (Annexure P-4) whereby the appellant had been dismissed under Article 311 (2) (a) of the Constitution of India, which order has further been upheld in appeal, vide order dated 29.08.2016 (Annexure P-7) by the Commissioner, Hisar Division.

2. The sole argument as such of the counsel for the appellant was that while noting that the revision petition was still pending before the authorities, the learned Single Judge proceeded to decide the issue on merits and noticed that there was an inquiry report and, therefore, came to the conclusion that standard of proof in criminal cases would be higher than civil proceedings. In departmental proceedings a fact may be held proved on preponderance of probabilities, which would be sufficient to proceed against an employee. The acquittal as such by another learned Single Judge did not weigh while dismissing the writ petition on the ground that there was statement of Mohinder Singh, Tehsildar, which had confirmed the recovery of Rs.1,000/- taken from the complainant. The learned Single Judge has further went on to hold that the Inquiry Officer had recorded the correct finding on the basis of the material placed before it and no fault could be found with the same and acting upon the report of the Inquiry Officer wherein charges against the writ petitioner were held to be duly proved and the punishing authority after complying with the further procedure in accordance with the law, inflicted the penalty of dismissal from service on the writ petitioner.

3. Counsel for the appellant has, accordingly, argued that a perusal of the order of the punishing authority would go on to show that there was no discussion regarding the inquiry report, apart from the bare mention that a

regular inquiry had been done by the SDM. The said fact has also been recorded by the learned Single Judge in its judgment.

4. Primarily the dismissal order was passed on the order of conviction, which had been recorded in FIR No.3 dated 31.01.2007 under Sections 7 & 13 of the Prevention of Corruption Act, 1988 lodged at Police Station SVB, Hisar, by the Special Judge on 01.11.2010 (Annexure P-5). The appellant had also preferred an appeal bearing Service Appeal No.4 of 2012 and kept it pending. Only after his acquittal by this Court in **CRA-S-2919-SB-2010** on 19.10.2015 (Annexure P-6), he pressed the appeal before the Commissioner, which was dismissed on 29.08.2016 (Annexure P-7) the ground that acquittal was on the ground of benefit of doubt and there was no explanation of the employee and why the currency as such was recovered alongwith phenolphthalein powder, which was found present on the person of the appellant. The appellant then filed civil writ petition in the year 2017, apart from the fact that he had also preferred the revision petition before the State. He had mentioned in the writ petition also that he had moved representations to the Financial Commissioner and Principal Secretary to Government of Haryana, Revenue Department, Haryana for his reinstatement, as per representation dated 01.10.2016 (Annexures P-9).

5. A perusal of the copy of revision petition (Annexure R-1) would go on to show that it was preferred against the order of dismissal dated 27.12.2011 and the subsequent order whereby Commissioner had dismissed his appeal on 29.08.2016. In the revision petition, he had taken the ground that bare perusal of inquiry would also reveal that the charge was not proved against him and dismissal order was bad in the eyes of law.

6. The State also in its reply has taken the objection that since there was an alternative and efficacious remedy available, the writ petitioner who was not in service could not pursue two remedies. The law is settled regarding the alternative and efficacious remedy which is available. Reference can be made to the judgment of the Apex Court in **United Bank of India Vs. Satyawati Tondon, (2010) 8 SCC 110**. The learned Single Judge instead of relegating the appellant to the revisional authorities chose to delve on the merits of the case. We do not wish to further elaborate on the reasoning given by the learned Single Judge, as it might prejudice the mind as such of the revisional authority.

7. We, thus, are of the considered opinion that instead of deciding the issue on merits, the matter should have been relegated to the revisional authority to decide the issue. *Prima facie* we are of the opinion that the inquiry report on the basis of which the dismissal as such was founded and which weighed with the learned Single Judge would require a fresh look by the revisional authority. The report in place (Annexure P-2) would go on to show that it is a three page enquiry report and the complainant did not support the department. On the statement of one Mohinder Singh, Tehsildar, the charge of accepting the money has been held to be proved. Counsel for the appellant has also pointed out from the judgment in **CRA-S-2919-SB-2010** that Mohinder Singh, Tehsildar was produced for two purposes, firstly regarding the mutation which had been sanctioned by the appellant and also that he was witness of the trap at the spot, but only on receiving signal from the shadow witness had reached the spot. The dismissal order is only based on the fact that the conviction order had been recorded and the said authority

never applied its mind to the enquiry report and whether the same could be made the basis of the dismissal.

8. In such circumstances, we set aside the order of the learned Single Judge and relegate the appellant to his revisional remedy which is pending before the competent authority. Since the dismissal was in the year 2012, it is expected that the revisional authority shall take steps to ensure that the revision is decided expeditiously. It is, however, made clear that we have not interfered in the order of dismissal and the further order of appeal.

9. With the aforesaid observations, the present letters patent appeal is partly allowed.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

18.04.2024
Naveen

Whether speaking/reasoned :	Yes
Whether Reportable :	No