

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

208

CWP-5475-2012 (O&M)

Date of Decision: 23.04.2024

SURESH KUMAR BUNKER

... PETITIONER

Versus

SYNDICATE BANK AND ORS

... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Sunil K.Chaudhary, Advocate
for the petitioner.

Mr. Vipin Mahajan, Advocate and
Ms. Tejinder Kaur, Advocate
for the respondent.

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 27.05.2011 (Annexure P-13) whereby he was compulsorily retired from service and;

(ii) order dated 05.01.2012 (Annexure P-15) whereby his appeal has been dismissed.

2. The petitioner joined respondent-bank as Clerk on 10.09.1985. The respondent No.2 in June' 1994 found one pay order missing which was presented for clearance on 25.06.1994 through Oriental Bank of Commerce. The respondent conducted enquiry and found that instrument was forged. During the course of enquiry, it was further found that three demand drafts were missing.

The respondent conducted enquiry and ultimately found the petitioner guilty for the missing of three demand drafts. He came to be suspended from service. The respondent on one hand initiated departmental enquiry and on the other lodged FIR under Section 409/411/34 of IPC against the petitioner and his accomplice Roshan Lal Gora. The police, during the course of search, conducted at the residence of petitioner recovered one demand draft. The enquiry officer in his report dated 06.08.1996 (Annexure P-4) declared him guilty of misconduct. It was found that the petitioner in connivance with one private person namely Roshan Lal Gora has misappropriated three demand drafts and one pay order. The disciplinary authority accepted report of enquiry officer and issued a show cause notice dated 31.10.1996 (Annexure P-5) proposing punishment of dismissal from service. In show cause notice, there was proposal of dismissal from service, however, he was awarded punishment of compulsory retirement with superannuation benefits. The trial Court vide judgment dated 19.01.1998 (Annexure P-6) on account of lack of proper evidence acquitted him. He preferred statutory appeal before Appellate Authority against the order of compulsory retirement which came to be dismissed.

3. Mr.Sunil K.Chaudhary, Advocate submits that the petitioner was acquitted by trial Court. The criminal proceedings as well as departmental proceedings were initiated on the same set of allegations. As the petitioner has been acquitted in criminal proceedings, he deserves to be reinstated and extended all service benefits. In support of his contention, he relies upon judgments of the Apex Court in **Capt. M. Paul Anthony vs. Bharat Gold Mines Ltd. 1999 (3) SCC 679** and **GM. Tank vs. State of Gujarat and another, 2006 (5) SCC 446.**

4. Per contra, Mr. Vipin Mahajan, Advocate submits that it is a settled proposition of law that yardstick for departmental proceedings is different from criminal proceedings. In case of criminal proceedings, the prosecution has to prove beyond reasonable doubt whereas departmental proceedings depend upon preponderance of evidence. The departmental and criminal proceedings cannot be weighed with the same scale.

5. I have heard the arguments of learned counsel for the parties and perused the record with their able assistance.

6. In Deputy Inspector General of Police and another vs. S. Samuthiram, (2013) 1 SCC 598, the Apex Court placing reliance upon its earlier judgment in Southern Railway Officers' Association vs. UOI, (2009) 9 SCC 24 has held that acquittal in criminal case itself cannot be a ground for interfering with the order of punishment imposed by the Disciplinary Authority.

7. In Kendriya Vidyalaya Sangathan and others vs. T. Srinivas, 2004 (7) SCC 442, the Apex Court set aside the order of the Tribunal which had been upheld by the High Court wherein disciplinary proceedings had been ordered to be stayed till the criminal trial is over. It was accordingly held that both the said proceedings were altogether distinct and different while placing reliance upon the judgment in State of Rajasthan vs. B.K. Meena, 1996 (6) SCC 417. The relevant extracts of judgment in Kendriya Vidyalaya's case (supra) reads as:-

“In the instant case, from the order of the tribunal as also from the impugned order of the High Court, we do not find that the two forums below have considered the special facts of this case which persuaded them to stay the departmental proceedings. On the contrary, reading of the two impugned orders indicates that both the tribunal and the High Court proceeded as if a departmental enquiry had to be stayed in every case where a criminal trial in regard to the same

misconduct is pending. Neither the tribunal nor the High Court did take into consideration the seriousness of the charge which pertains to acceptance of illegal gratification and the desirability of continuing the appellant in service inspite of such serious charges levelled against him. This Court in the said case of State of Rajasthan (supra) has further observed that the approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. It held that in the disciplinary proceedings the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may be, whereas in the criminal proceedings the question is whether the offences registered against him are established and, if established, what sentence should be imposed upon him. The court in the above case further noted that the standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are distinct and different. On that basis, in the case of State of Rajasthan the facts which seems to be almost similar to the facts of this case held that the tribunal fell in error in staying the disciplinary proceedings.”

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

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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 re-consider 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.”

9. In the case in hand, the petitioner was subjected to departmental and criminal proceedings. The criminal proceedings were initiated after initiation of departmental proceedings. The foundation of proceedings was misappropriation of demand drafts and pay order. The enquiry officer in its report found that the petitioner was guilty of misconduct. He had misappropriated all the four instruments. The police during investigation recovered one demand draft from his residence. He has been acquitted by trial Court on the ground that prosecution has failed to prove its case beyond reasonable doubt. It is not a case where criminal proceedings are foundation of departmental proceedings. The petitioner is relying upon judgment of Supreme Court in **Capt. M. Paul Anthony's case (supra)** which is not applicable to his case. In the said case, the delinquent employee was guilty of theft. Police initiated investigation against

him and during the course of search of his residence recovered gold. On account of said fact, departmental proceedings were initiated.

10. The sole ground to challenge findings of departmental authorities is acquittal in criminal case. This Court is of the considered opinion that if criminal proceedings are initiated on account of departmental proceedings, the outcome of departmental proceedings besides the fact that both proceedings are independent and different yardstick is applied, cannot be ignored or brushed aside on account of dropping of criminal proceedings. In case of departmental proceedings, the department is not bound to prove its case beyond the reasonable doubt whereas findings depend upon preponderance of evidence. The petitioner was subjected to departmental enquiry wherein he was found guilty. The disciplinary authority though issued show cause notice for dismissal from service but taking a lenient view ordered to prematurely retire him. The Appellate Authority has considered all the averments of the petitioner. The petitioner cannot be exonerated on the sole ground that he has been acquitted in criminal proceedings.

11. In view of judgment of Supreme Court in Subrata Nath’s case (supra) and P. Gunasekaran’s case (supra), the scope of interference is very limited and in the instant case no ground to interfere with findings recorded by the departmental authority is made out.

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

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

23.04.2024

anju

(JAGMOHAN BANSAL)

JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes