

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

209

CWP-25171-2014 (O&M)
Date of Decision : 19.03.2024

ROSHAN LAL SHARMA PETITIONER

Versus

UNION OF INDIA AND ORS RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Rajeev Anand, Advocate
for the petitioner.

Mr. Arun Gosain, Sr.Panel Counsel
for the respondents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 16.10.2014 (Annexure P-15) whereby the respondents has ordered for recovery of Rs.4,46,499/- from the petitioner in 36 equal installments.
2. The petitioner, during the relevant period, was serving as Deputy Commandant in Indo Tibetan Border Police Force (ITBPF). A theft of few liters oil took place and authorities doubted involvement of the petitioner. A Court of Enquiry in terms of ITBP Act, 1992 read with ITBP Rule 1994 (for short ‘1994 Rules’) was constituted. In the enquiry report, it was found that petitioner was involved in the alleged theft. On the basis of report of the Court of Enquiry, the petitioner was issued statement of allegations in terms of Rule 43 of 1994 Rules. The relevant extracts of the statement of allegations are reproduced as below :-

The accused :-

1. 890020444 AC/GD Roshan Lat, 43 Br. ITBP

2. 880182900 HC/GD Jamall Singh. "C" Coy 37
BN ISBP

First Charge :

ITBP Act-33(b)

*DISHONESTY
MISAPPROPRIATES OR
CONVERTS THE GOVT
PROPERTY TO HIS OWN USE*

In that they, on 06-03-10 while deployed at Hanley post of 43 Bn. ITBP dishonestly misappropriate K.Oil (Govt. Property) about 15,236 liters (with 12 barrels) worth of Rs.6,54,691/- and sold the K/Oil to civilians in Hanley village area.

ITBP Act-33(a) *FALSIFYING OFFICIAL
DOCUMENTS AND FALSE
DECLARATIONS*

In that they, on 06-03-10 while deployed at Henley forward post of 37th Bn knowingly failed to show the accurate quantity of Kail in the Coy stock ledgers of "C" Coy 37th Bn. ITBP.

Third Charge

*ITBP Act-33(b) FALSIFYING OFFICIAL
DOCUMENTS AND FALSE
DECLARATIONS*

In that they, on 06-03-10 while deployed at Henley forward post on 37th Bn ITBP knowingly omitted to mention the accurate quantity of K. Oil of coy stock ledgers of "C" Coy with intend to defraud

Fourth Charge :

The accused:-

890020411 AC/GD Roshan Lal, 43 Bn. ITBP

*ITBP Act-28 USING CRIMINAL FORCE TO A
PERSON SUBJECT TO THE ITBP*

*ACT, BEING HIS SUBORDINATE
THE RANK”*

3. Thereafter, the petitioner was issued show cause notice dated 13.04.2012 calling upon to show cause as to why a sum of Rs.4,46,499/- on account of theft of oil should not be recovered from him. The petitioner filed reply to aforesaid show cause notice and vide order dated 20.06.2012, the Court of Enquiry Officer was directed to prepare the record of evidence. The order dated 20.06.2012 reads as :

Under the provision of Rule-45 of ITBP Rules-1994 hearing of No.890090411 AC/DG Roshan Lal was conducted on 19-04-2012. The case has been remanded for R.O.E.

2. In terms of Rules-45 (iii) read with rule-50 of ITBP Rules-1994 Sh. Rajinder Singh, 2 I/C is hereby detailed as ROE officer to prepare Record of Evidence against No.890090411 AC/DG Roshan Lal of 43 Bn. attached with 37th Bn. ITBP for the charge mentioned in charge sheet enclosed with this order No.837030274 SI/GD Bhim Singh will be independent witness during R.O.E.

3. The R.O.E. Officer to prepare the Record of Evidence in accordance with Rule -50 of ITBPF Rules-1994. Proceeding be submitted to the undersigned for further necessary action with in 07 days Adjutant 37th Bn. ITBP is hereby authorized to provide all documents required in record of evidence.

4. The ROE Officer will submit R.O.A to the undersigned with in a week.

4. On the basis of record of evidence, a charge-sheet came to be issued. The record of court enquiry, record of evidence and reply of the petitioner was put up before Inspector General (North West Frontier) who vide

order dated 26.02.2013 concluded that allegation of sale of kerosene oil against the petitioner is false. The petitioner was exonerated from the charges. The relevant extracts of the order dated 26.02.2014 are reproduced as below :

9. The Court of Inquiries appointed for this inquiry have not done the inquiry properly shows their lack of professional competence. In this regard the Inquiry Officer Sh. Ajay Singh Deputy Commandant (now 2nd in Command 16 Bn) is advised to be more careful in his work.

10. On the incident of beating of Const/Driver Uttam Munda by AC/GD Roshan Lal, ROE has been ordered against the officers which will be disposed of.

Conclusion: On the analysis made above I have reached the conclusion that the Court of Inquiry has not evaluated the situation in reality, statement of witnesses and available evidence properly. This reflects the professional competence of the committee. The allegation of sale of kerosene oil is not proved as per evidence. Earlier the issue has been finalized without analysis whereas the inquiry was to be finalized at the frontier

(2) This situation has arisen due to bad situation in the battalion. Thus to control this before giving orders of court of Inquiry, the Commandant verify on ground. Thus keeping into consideration the above facts the Court of Inquiry is set aside.

Sd/-

Inspector General (North West) Frontier

Dated 26.02.2013

5. The order dated 26.02.2013 was followed by memorandum dated 15.03.2013 whereby Inspector General (North West Frontier), warned the

petitioner to be careful in future so as to avoid recurrence of such instance. The relevant extracts of the order dated 15.03.2013 are reproduced as below :

AND WHEREAS, there is sufficient indication in the evidence on record that Sh. Rohsan Lal Sharma, AC (GD), being the company commander of Hanley post during the period in issue, failed to maintain a cordial relation with subordinates which is the root cause to the complete episode. It is expected out of an officer of the rank of Asst. Comdt, commanding a detachment to keep all elements at his disposal like a well oiled and synchronized machine, so that it can deliver the maximum output, in times of need, Sh. Rohsan Lal Sharma, AC (GD), miserably failed in performing this duty expected to him for which he had enough opportunity to produce evidence in his favour during the preliminary hearing, ROE etc.

NOW THEREFORE, Sh. Rohsan Lal Sharma, AC (GD), is hereby 'WANTED' to be more careful in future so as to avoid recurrence of such instance and also advised to maintain cordial relation with subordinates.

6. The Inspector General (North-West) Frontier vide impugned order dated 16.10.2014 has ordered to recover a sum of Rs.4,46,499/- from the petitioner.

7. Mr. Rajeev Anand, Advocate submits that impugned order was passed in the teeth of order dated 26.02.2013 (Annexure P-12) passed by the competent authority. As soon as order dated 26.02.2013 came to be passed, the proceedings came to an end. The order dated 26.02.2013 was passed by Inspector General (North-West) Frontier and impugned order has been passed by Inspector General (Supply). There is no provision in the Act which permits same rank officer to pass fresh order on concluded proceedings.

8. Per contra, Mr. Arun Gosain, Sr. Panel Counsel submits that order dated 26.02.2013 was not a correct order and it was passed contrary to facts and evidence on record, thus, another order dated 16.10.2014 came to be passed whereby recovery of loss was ordered.

On being asked, Mr. Arun Gosain, Sr. Panel Counsel conceded that orders dated 26.02.2013 and 16.10.2014 have been passed by same rank of officer and there is no provision in the Act to review or set aside order passed by predecessor.

9. I have heard the arguments of learned counsel for the parties and perused the record.

10. It is undisputed fact that the petitioner being member of Indo-Tibetan Border Police Force is governed by ITBP Act, 1992 and rules made thereunder. The petitioner was subjected to enquiry in accordance with procedure prescribed by 1992 Act and rules made thereunder. The complete procedure as noticed hereinabove was followed and thereafter order dated 26.02.2013 came to be passed. The respondent has failed to point out that Inspector General (North-West) Frontier was incompetent to pass order dated 26.02.2013. The said officer in his order concluded that allegation of sale of kerosene is not proved and issue has been finalized without analysis. The order dated 16.10.2014 was passed by an officer who was holding same rank as by an officer who passed order dated 26.02.2013. The ITBP Act, 1992 is a complete code and prescribes complete procedure with respect to disciplinary proceedings and punishment. The respondent has failed to point out any provision which empowers a successor in office to recall a concluded enquiry and order passed by his predecessor. The quasi Judicial orders can be recalled or reviewed or set aside by an authority prescribed in the Act and subject to restrictions imposed

therein. Normally, an order of quasi judicial authority cannot be reviewed or rectified by same authority. It can be reviewed or revised or set aside by a higher authority.

11. In the case in hand, in the absence of specific provision, the same rank officer has modified order passed by his predecessor. The earlier order was outcome of enquiry conducted by competent authority. The enquiry proceedings concluded as soon as order dated 26.02.2013 was passed by a competent authority. The impugned order dated 16.10.2014 was passed beyond jurisdiction and contrary to settle principles of law, thus, it deserves to be set aside and accordingly set aside.

12. Pending miscellaneous application, if any, shall also stand disposed of.

19.03.2024
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes
<i>Whether Reportable</i>	<i>Yes</i>