

2024.PHHC.172588



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

**RSA-368-2014 (O&M)
RESERVED ON:30.09.2024
PRONOUNCED ON:20.12.2024**

BED RAM

.....APPELLANT

VERSUS

STATE OF HARYANA AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Rajesh Arora, Advocate
 for the appellant.

 Mr. Baljinder Singh Virk, Sr. DAG, Haryana
 for the respondent-State.

SANDEEP MOUDGIL, J

1. The present appeal has been preferred by Bed Ram-Appellant with a prayer to set aside the impugned judgment of District Judge, Faridabad, dated 08.08.2013, reversing the judgment of Civil Judge, being patently and manifestly illegal and to uphold the judgment and decree passed by the Civil Judge (Junior Division) Faridabad, dated 06.10.2012, whereby the suit of the plaintiff/appellant to seek declaration with consequential relief of mandatory injunction has been decreed in favour of the plaintiff and the penalty of stoppage of two annual increments of the plaintiff with cumulative effect was reduced (from with cumulative effect) to with cumulative effect.

2. The brief facts of the present case is that Plaintiff–Bed Ram

(Appellant) preferred a suit for declaration with consequential relief of mandatory injunction, against Govt. of Haryana; Inspector General of Police, Railways and Commandos Haryana and Station House Officer, GPR, Police Station Faridabad, on the ground that the plaintiff in the capacity of MHC deployed/posted in the GRP Police Station Old Faridabad (Railway) by the competent authority of the defendants w.e.f. 09.05.2005 and remained working upto 19.11.2005 and the terms and conditions of his service for the purpose of performance of duties and others act and conduct are being governed under the Punjab Police Rules (Haryana) amended upto date, even while posted in the Police Station GRP Faridabad. It is pertinent to submit here that a register No.14 is maintained in terms of PPR Rules, 1934, at the Police Station GRP Faridabad and from the aid register, it is entered the posting of MASs and MHCs respectively. The said register also disclosed the periodicals checking by the respective officers, this register also disclosed the position/situation of the malkhana of Mukadmat and their measurement etc. this register also disclosed the information of sanctioned post, jurisdiction of the crimes and other all relevant information pertaining to the respective PS GRP in Haryana. In the present case, the plaintiff resumed his position on 09.05.2005 at the PS GRP Faridabad and is liable and responsible for the said document in question w.e.f. 9.5.2005 to 19.11.2005 of his period and accordingly the plaintiff is answerable only to extent of the entries made in the aid register/document at PS GRP Faridabad to which he is abide by to take into account, the particulars of the said documents for all intents and purposes as correct. On dated 06.10.2005 a team of the CBI checked the Thana PS GRP Faridabad along with the Mal Muqadama under NDPS Act and the said team also demanded the

posting and working of the GRP staff of MASs and MHCs w.e.f. 10.10.2001 to the year 2004 the plaintiff submitted the particulars of posting in the manner to the CBI team:-

ASI Rajender	09.04.2003 to 15.09.2003
ASI Bijender	15.09.2003 to 18.02.2004
ASI Ranjit Singh	18.02.2004 to 03.06.2004
ASI Dharam Raj	03.06.2004 to 28.11.2004
ASI Ranjit Singh	28.11.2004 to 20.04.2005
ASI Dunger Singh	20.04.2005 to 09.05.2005
HC Bed Ram	09.05.2005 to 19.11.2005

3. It is also stated that the plaintiff also produced the Mal Mukadma under NDPS Act and also the CBI Team weighed/measured the weightage of the said old Mal Mukadama of NDPS pertaining to FIR No.232, 233 and 240 in which the weight found less as per record and thereafter on the basis of staff particulars, staff particulars information and observing less measurement of the mal Mukadama in three FIRs, the disciplinary authority proceeded against the plaintiffs and a departmental enquiry was appointed, who made its finding report to the next competent authority and the competent authority served the show cause notice No.547/steno dated 5.10.2007 upon the plaintiff. The plaintiff submitted his reply dated 22.10.2007 to the aforesaid show-cause notice with the material fact and also stated that the finding report is also vitiated, perverse, biased and arbitrary on the basis of material facts, documents and evidence on the record, but even then the authority of the defendant No.2 inflicted the major punishment upon the plaintiff vide its order/Endt. No.561-65/steno dated 29.10.2007, vide which two annual increments with cumulative

effect/permanent effect, were ordered to be stopped. Thereafter, the plaintiff submitted his appeal before the Appellate Authority on dated 26.11.2007/ 2.12.2007 and the aforesaid appeal was also rejected/denied. The charge/allegation framed out by the enquiry officer and further the investigation of the charge/particulars with respect to the posting of the GRP staff submitted to the CBI Team and found less weight of the mal mukadama of FIR No.232 dated 10.09.2003, FIR No.233 dated 11.09.2003 and FIR No.240 dated 17.09.2003 against the innocent plaintiff. The enquiry and its findings report reveals perverse, vitiates, biased and arbitrary, because the enquiry officer has neither taken into account whether there arises any misconduct nor the circumstances, distance of time and situation of the malkhana seepage, moisture, damaged by rains, heat etc. Hence the suit.

4. Learned counsel appearing for the appellant has argued that the lower Appellate Court has gravely erred in reversing the judgment passed by the learned trial Court because the said judgment was based on the oral as well as documentary evidence before it. The learned trial Court has noticed that the plaintiff/appellant was not found guilty in the criminal proceedings and was, therefore, acquitted. The learned lower Appellate Court failed to appreciate that the trial court did not exonerated the plaintiff completely as innocent in view of his acquittal in the criminal proceedings but reduced the punishment from with to without cumulative effect, therefore, the approach of learned lower Appellate Court to reverse the findings is totally unjust and erroneous. Though, the details given by the appellant/plaintiff to the CBI were correct as per the admission of DW-1 in his cross-examination, yet the authorities proceeded against the plaintiff/appellant in departmental enquiry and imposed

penalty upon him. He has further argued that the prosecution witnesses have failed to prove the guilt of the appellant/plaintiff before the trial Court in criminal proceedings, therefore, plaintiff/appellant was acquitted by the trial Court. The present proceedings are the very basis of the same and similar allegations which contained in the FIR against the appellant/plaintiff. Therefore, once prosecution has failed to make out a criminal offence under Section 409 IPC as regards Breach of Trust, the allegations alleged to be proved in departmental proceedings also render insignificant and accordingly, the penalty imposed upon the appellant/plaintiff also renders inconsequential. The perusal of the show cause notice, Ex.P2, will reveal that the departmental proceedings were also initiated on account of alleged shortage of less weight of contraband and for providing wrong information whereas the criminal trial against the appellant/plaintiff was also for the same set of allegations. Therefore, the learned lower Appellate Court has erred in holding that the criminal proceedings have no riding effect over departmental proceedings, which will be absolutely wrong and illegal approach because a person cannot not be punished for an offence which the department of said person has itself failed to prove against its own employee against whom it has initiated departmental proceedings on the same set of allegations as such decision of the Enquiry Officer to prove the allegations cannot sustain as against the decision of a Court of law. The learned counsel has, thus, prayed for setting aside the judgment and decree of the lower Appellate Court.

5. He has relied upon the judgment titled “***Krishan Kumar Sharma Vs. Union of India and others***” reported as 2011(2) SLR 474 passed in C.W.P. No.21850-CAT of 2008, by a Division Bench of this Court which is based on

the judgment of the Constitution Bench of the Hon'ble Supreme Court delivered in the case of ***"Rameshwar Prasad (VI) vs. Union of India"*** reported as (2006) 2 SCC 1 and a Division Bench judgment of this Court titled ***"Gurdev Singh vs. State of Haryana, reported as 2006(4) S.C.T. 433***, to contend that where the Enquiry Officer, Punishing Authority or the Appellate Authority has proceeded on the basis of wholly irrelevant material or wholly irrelevant consideration or in violation of principles of natural justice then the Courts are empowered to interfere with the quantum of punishment. He has produced a copy of the said judgment in Court.

6. On the other hand, the learned State Counsel has submitted that the judgment passed by the learned lower Appellate Court is a just and proper judgment as according to the judgment relied upon by the lower Appellate Court, the quantum of punishment awarded by the departmental Punishing Authority cannot be altered by the trial Court because the departmental Punishment Authority is the appropriate and competent authority to award punishment to its employee keeping in view the gravity of his misconduct and guilt. The appellant/plaintiff had failed to produce his proper defence before the Enquiry Officer and that's why the allegations against him stood proved and after considering the enquiry report, the appellant was served with a charge-sheet with a proposed penalty of reduction in rank from Head Constable to Constable, however, taking a lenient view by the Punishing Authority, the appellant/plaintiff was awarded the penalty of stoppage of two annual increments with cumulative effect as such the penalty imposed upon the appellant/plaintiff is already on the lower side, which cannot be altered in any manner whatsoever. As such, the lower Appellate Court has proceeded

correctly and fairly in reversing the judgment of the trial Court, thus, the judgment of lower Appellate Court is liable to be upheld and the present appeal deserves dismissal.

7. Heard the learned counsel for both the sides and case file also perused with their able assistance.

8. After hearing both the counsel and going through the case file, this Court is of the considered opinion that the learned lower Appellate Court has not applied its mind with a judicious approach because when the prosecution, much less the department, has failed to prove its case against the appellant/plaintiff, who was facing trial for the commission of offence under Section 409 IPC, on an FIR got lodged by the Department (GRP Police Station) itself, which relates to the allegation of “Breach of Trust”, the Enquiry Officer, who conducted the enquiry, is proved to have proceeded against the appellant/plaintiff with a biased mind because he was to prove the allegations against the appellant/plaintiff as the department was to fix the responsibility of someone for the alleged shortage of weight of the contrabands in three FIRs referred above.

9. The Enquiry Officer failed to take note of the important fact that the appellant/plaintiff had joined the Police Station concerned in May 2005 and all the three FIRs are of the year 2003. There is no evidence on record to the effect that when charge was given to the appellant/plaintiff then the weight of the contraband was checked and noted down somewhere. It is alleged that on checking of the Police Station, weight of contraband in these three FIRs was found less, however, no report has been placed by the department/prosecution on record of the relevant time when the charge was handed over/taken over

before the joining of the appellant/plaintiff in the police station. Ex.P7 is the checking and measurement report of weight of psychotropic substance GRP P.S. Faridabad, after the checking was conducted by CBI.

10. Further there is no report placed on record prior to that period or to say between October, 2003 to 08.05.2005 to prove on record that the shortage is after the joining of the appellant/plaintiff in the Police Station. It was also relevant to take note of the fact by the Enquiry Officer during enquiry that the date joining of the appellant/plaintiff in the Police Station is 09.05.2005 and the checking was conducted by the CBI team on 06.10.2005, i.e., little less than one month.

11. That being so, how the Enquiry Officer can expect from the appellant/plaintiff of doing all this within just 27/28 days only and exonerated all other officials who remained in charge of the said contrabands from September, 2003 to 08.05.2005. If there was shortage, in reality, then the Enquiry Officer should have proved allegations against them also. It is the admitted case of the witnesses examined by the prosecution/department that the nature of the contraband is such that it gains weight during rainy season due to moisture and losses weight in dry season. Meaning thereby, there is no certainty of exact weight of the contraband, according to the own admission of the prosecution witnesses. If this admission is seen then the alleged shortage is *prima facie* fictitious.

12. Accordingly, in this way, the appellant/plaintiff was rightly acquitted by the Criminal Court in the FIR case and it is also proved that the appellant/plaintiff has been wrongly, incorrectly and abruptly held liable for the alleged shortage of the contraband in above referred three FIRs and the

departmental and criminal proceedings have been fastened upon him. All the prosecution witnesses appearing before the trial Court have deposed in one word that the nature of contraband is to change its weight according to the change of season then the question would arise, whether the Enquiry Officer was not aware of this fact and why would he hold the present appellant/plaintiff held liable of the alleged shortage when the shortage is due to natural process.

13. Therefore, it is clear from the fact that the Enquiry officer has not conducted the enquiry in a just, fair and proper manner and he acted with a biased mind to hold the appellant/plaintiff guilty because the charge of the said contraband was with him but the Enquiry Officer failed to appreciate that the charge of the contraband has come into the hands of the appellant/plaintiff about 27/28 ago and it takes few months for a new incumbent to settle on his/her new assignment/work. The Enquiry Officer has further erred in holding the appellant/plaintiff guilty because if the appellant/plaintiff was to tamper with the case property i.e. contraband, then he had other FIRs/case also of similar nature of other months/years to tamper with or to say cause shortage but the Inquiry Officer has completely failed to examine the things in a right perspective and proceeded with a biased mind against the present appellant/plaintiff.

14. Accordingly, this Court finds that the penalty imposed upon the appellant/plaintiff has not been imposed with impartial and fair mind but with an intention and a motive to make someone liable and punish him/her to escape from being answerable to CBI and this Court in the case in which this Court had issued directions to CBI to check the police stations. This is further

evident from the fact that after acquittal of the appellant/plaintiff in criminal case i.e. **State Vs. Bed Ram** arising out of FIR No.56 dated 1.6.2006, under Section 409 IPC, registered at Police Station GRP Ballabhgarh, vide judgment dated 14.7.2012, the respondent-State did not choose to file appeal against the judgment of acquittal. Therefore, the penalty imposed upon the appellant/plaintiff is result of a pre-determined and biased mind and the learned lower Appellate Court has also ignored to look into this aspect of the matter. Accordingly, this Court does not find any ground to hold that the penalty imposed be sustained in any manner whatsoever.

15. This Court has also gone through the Division Bench judgment of this Court, in “Krishan Kumar Sharma’s case (supra) and its relevant para Nos. 25 & 26, read as follows:

“25. It is well settled that if the Enquiry Officer, Punishing Authority or the Appellate Authority has proceeded on the basis of wholly irrelevant material or wholly irrelevant material consideration or in violation of principles of natural justice then the Courts are empowered to interfere with the quantum of punishment. In that regard reliance may be placed on the Division Bench judgment of this Court rendered in the case of Gurdev Singh vs. State of Haryana, 2006(4) S.C.T. 433: 2007(1) RSJ 45. In that case a Division Bench of this Court (of which one of us, M.M.Kumar, J. was a member) has considered the application of Wednesbury Principles by referring to para 242 of a Constitution Bench of Hon’ble the Supreme Court in the case of Rameshwar Prasad (VI) v. Union of India, (2006)(2) SCC 1. The aforesaid para 242 reads as under:-

“242. The Wednesbury principle is often misunderstood to mean that any administrative decision which is reared by the Court to be unreasonable must be struck down. The correct understanding of the Wednesbury principle is that a

decision will be said to be unreasonable in the Wednesbury sense if (i) it is based on wholly irrelevant material or wholly irrelevant consideration, (ii) it has ignored a very relevant material which it should have taken into consideration, or (iii) it is so absurd that no sensible person could ever have reached it.” (Emphasis added)

26. *When we examine the facts of the present case in the light of the aforesaid observations made by Hon’ble the Supreme Court, it is evident that the judicial review of the impugned orders passed by the Punishing Authority, Appellate Authority as well as the Tribunal would require intervention and it would be perfectly within the four corners of judicial review.”*

16. Therefore, the Division Bench of this Court has clearly held that the order passed by the Punishing Authority, Appellate Authority as also that of the Tribunal can be interfered with which falls within the four corners of the judicial review. In the present case/appeal, the orders passed by the Punishing Authority/Appellate Authority are liable to be interfered with as the same have been passed in an arbitrary, and unfair manner with biased mind.

17. In view of the above discussions and the view taken by the Division Bench of this Court in **“Kishore Kumar Sharma’s** case (supra), the present appeal is allowed and the judgment of the lower Appellate Court i.e. Court of District Judge, Faridabad, in Civil Appeal No.184/21.11.2012, dated 08.08.2013, is hereby set aside and the judgment of the learned Civil Judge (Junior Division) Faridabad, in Civil Suit No.RBT/183 dated 27.11.2008, dated 6.10.2012, is further modified to the extent that the penalty of stoppage of two annual increments without cumulative effect, imposed upon the appellant/plaintiff, stands set aside with immediate effect, by this Court. If the penalty imposed has already been affected then the appellant/plaintiff will be

liable for its recovery and if not affected so far, then the department will not act upon the order of penalty/punishment imposed upon the appellant/plaintiff, dated 19.10.2007, in view of this order.

18. Pending application, if any, shall stand disposed off with the final disposal of this appeal.

(SANDEEP MOUDGIL)
JUDGE

20.12.2024

Sham

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*