



LPA-2304-2024 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

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LPA-2304-2024 (O&M)
Date of Decision:23.09.2024.

Tara Singh through his L.Rs.

...Appellant

Versus

State of Punjab & another

.... Respondents

CORAM: HON'BLE MRS. JUSTICE LISA GILL.
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Mandeep Singla, Advocate for the appellant.

Mr. R.S. Pandher, Sr. DAG, Punjab.

...

SUKHVINDER KAUR, J.

CM-5565-LPA-2024:

Heard.

There is a delay of 4 days in filing of the appeal.

For the reasons mentioned in the application and arguments addressed, it is considered just and expedient to hear the appeal on merits rather than dismiss it on technical grounds of delay. Thus, delay of 4 days in filing of the appeal is condoned.

Application is disposed of accordingly.

LPA-2304-2024:

1. Instant appeal has been filed for setting aside order dated 14.08.2024 passed by learned Single Judge, whereby CWP-4230-2003 filed by appellant/writ petitioner was dismissed.



2. Brief facts necessary for adjudication of appeal are that appellant/writ petitioner filed aforesaid writ petition for quashing order dated 18.02.2003, whereby petitioner was dismissed from service.

3. As per pleadings, appellant/writ petitioner worked with Armed Forces for 20 years. Thereafter, he joined Punjab Police on 09.10.1981. In the year 1996, he was shifted to Welfare Branch of Punjab Police and was working as a Senior Assistant under respondent No.2. He was incharge of receipt of cash from borrower of Welfare Fund. As per the prescribed procedure, installments were received by Accounts Branch from borrower and cash was deposited with the bank. The entries were accordingly made in cash book as well as ledger. The folio number of cash book was required to be recorded in ledger.

4. It is averred that during March, 1999 to November, 2000, appellant collected sum of Rs.2,69,380/- from different police officials as their installments but did not deposit the same in bank. The competent authority put him under suspension w.e.f. 01.06.2001 and thereafter he was charge sheeted on 20.08.2001. Inquiry was conducted and competent authority found him guilty of embezzlement. Thereafter, he was dismissed from service vide the impugned order dated 18.02.2003.

5. Appellant filed CWP-4230-2003, which was however dismissed by learned Single Bench on 14.08.2024. Aggrieved therefrom, present appeal has been filed.

6. Learned counsel for the appellant vehemently contended that the punishment of dismissal from service is disproportionate to the alleged



offence. He further contended that learned Single Judge has not appreciated the fact that the appellant had already deposited the entire alleged amount of Rs.2,69,380/- on 15.05.2001 before the date of suspension. Once the entire alleged amount had already been deposited by the appellant, then there was no question of embezzlement of funds and charges levelled against the appellant were invalid and unjust. He urged that neither are there any proper rules prescribed to maintain the ledger book nor any specific entry was required to be recorded. It was not appreciated by learned Single Judge that appellant in his reply specifically stated that out of Welfare Fund, some amount was being used for certain official purposes i.e. hotel expenses, telephone bills, electricity bills, travelling tickets etc., on instructions of the senior police officials. Sufficient explanation was given by the appellant for delay in depositing the Welfare Funds and charge sheet for embezzlement of funds was not sustainable in the eyes of law. Moreover, appellant was having unblemished service record. It is, therefore, prayed that this appeal be allowed and the impugned order passed by learned Single Judge dismissing CWP-4230-2003 be quashed and the writ petition be allowed as prayed for.

7. Learned counsel for the State on advance notice, opposes the appeal and seeks dismissal thereof.

8. We have heard learned counsel for the appellant/writ petitioner and have perused the file with their able assistance. However, we do not find any ground for setting aside order dated 14.08.2024.

9. It is a settled position that power of judicial review in matters like present is limited. This Court is not to examine the matter as if sitting in



appeal. The scope of enquiry is only to examine whether the decision making process is legitimate. There is scope for interference only when it is found that Inquiry Officer or Disciplinary Authority has not considered any evidence on record or misread the evidence and procedure as prescribed by law has not been followed. In this context, learned Single Bench has rightly referred to the judgment of Hon'ble Supreme Court in **Union of India and others Vs. Subrata Nath, 2022 LiveLaw (SC) 998** and **Union of India and others Vs. P. Gunasekaran, (2015) 2 SCC 610**. The relevant extract of judgment in **P. Gunasekaran's case (supra)** reads as under:

“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) reappreciate 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.”

10. In **Subrata Nath's case (supra)**, the Hon'ble Supreme Court has held that:-

“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 reconsider 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.”

11. From perusal of the file, it emerges that the alleged amount was collected by the appellant during March, 1999 to November, 2000, whereas deposit was made on 15.05.2001. Thus, there was substantial delay in depositing of the installments recovered from different police officials and appellant had no authority to retain the alleged amount. From the record, it is also evident that there was manipulation in cash book and ledger. Petitioner was part of a disciplined force and was bound to maintain above board integrity. There is no misreading of evidence or non-application of mind or consideration of facts not supported by evidence, which calls for interference. Punishment awarded is not disproportionate to the alleged offence so as to shock the conscience of the Court.

12. Learned counsel for the appellant is unable to point out any illegality, irregularity or infirmity in the impugned order passed by learned Single Bench. No other argument is addressed.



- 13. Keeping in view the facts and circumstances as above, this appeal is dismissed with no order as to cost.
- 14. Pending application(s), if any, shall also stand disposed of.

(SUKHVINDER KAUR)
JUDGE

(LISA GILL)
JUDGE

23.09.2024.
harjeet

Whether speaking/ reasoned :	Yes/ No
Whether Reportable :	Yes/ No