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

**CWP-24034-2023
DECIDED ON: 01.03.2024**

RAVINDER @ RAVINDER SINGH **.....PETITIONER**

VERSUS

UNION TERRITORY OF CHANDIGARH AND OTHERS
.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH.

Present: Ms. Divya Sharma, Advocate
for the petitioner.

Mr. Sanjeev Ghai, Advocate and
Dr. Payel Mehta, Advocate
for the respondents – UT, Chandigarh.

SANJAY VASHISTH, J (ORAL)

1. By filing the present writ petition, petitioner – Ravinder @ Ravinder Singh, son of Late Sh. Rampal aged 22 years, has sought quashing of the order dated 04.03.2022 (Annexure P-1) whereby, District Commandant Home Guards, Union Territory, Chandigarh, (Respondent No.4) ordered the petitioner to be discharged from the roles of Home Guards Organisation.

On assailing the order dated 24.03.2022 in the appeal, Home Secretary, UT Chandigarh, (respondent No.2), vide its order dated 12.07.2023 also affirmed the same. Thus, both the orders are questioned by the petitioner before this Court.

2. Summarized facts of the present writ petition are that:-

- a) Father of the petitioner while serving as Home Guard volunteer expired and thereupon, petitioner was enrolled on 21.08.2020 as Home Guard Volunteer in the Chandigarh Home Guards Organization, on compassionate grounds in place of his father.
- b) Initially, petitioner served at Police Station, Sector 36, Chandigarh, and thereafter, was deployed with PCR Wing of Police Chandigarh.
- c) On the intervening night of 29/30.12.2021, at Sector 34/35 light point, on the road towards Sector 34, one traffic nakka was installed under the supervision of ASI - Ajit Singh (2743/CP) along with Constable Pawan (4998/CP), Home Guard volunteer (HGV) - Somveer (547/CHG), and HGV Ravinder @ Ravinder Singh (719/CHG), who is petitioner herein.
- d) One Gurdeep Singh made a complaint about the corruption in traffic police, Chandigarh, via e-mail (kala782256@gmail.com) on 30.12.2021 at 12:29:23 IST.

Version of the complainant is reproduced here under:-

“Respected

Sir/Madam,

This is Gurdeep Singh (from mansa) currently living in mohali, sector - 78.

This is to inform that after having a meal at sector - 34 market, i have been returning through the intersection road of sector 34/35 (Himalayan Marg). While took a slip and found that traffic police has been checking the vehicle and asked me to park at side of road.

They asked me why my seat was loose (though i had worn it as it was meant to be), so i told them that its loose, because system that keeps the belts has been broken last sunday (Dated 25 dec 2021).

So person denied request and came up with two option. Either i pay online challan of Rs 3000 (for which slip will be given) or i can give them Rs 1500 under the table.

On which i said that its too much, though i agree to give Rs 500, against which he warned me of challan 3000.

So later on he agreed to Rs 1000.

The good part is that he instructed me to google pay the amount. For which i did transaction (Trans. ID - 1363615100011) on mobile number 7087383559 (Named - Gurpuran dhanao).

So my main concern is how easily and openly they are part of corruption. If you check the transaction of above provided on other days too, we might end up exposing a big extortion gang (in dress of traffic police).

Regards

Gurdeep singh

Sent from my iPhone”

e) In the complaint moved by Complainant – Gurdeep Singh, no name of any particular officer was mentioned.

f) Preliminary enquiry was initiated and after recording the statements, report dated 02.02.2022 (appended as Annexure R-1 with the reply) was prepared by Deputy Superintendent of Police, Traffic (South), UT, Chandigarh, proposing to take necessary action against HGV Somveer (547/CHG) and HGV Ravinder @ Ravinder Singh (719/CHG) posted at Police Station Sector 36.

For convenience, conclusion recorded in the inquiry report dated 02.02.2022 is reproduced here under:-

“Keeping in view the above facts and statements recorded during the enquiry, it revealed that in absence of Incharge at joint naka Sector 34/35 LP Vol. Sombir

No.547/HGV stopped & dealt with the complainant and asked him to send money Rs. 1000 to his friend Mr.Gurpuran Singh and then Mr.Gurpuran Singh sent back the amount Rs.2000/-(in addition to another payment of Rs. 1000 received from Mr .Dhananjay Khimta) at mobile No.9781285075 (the mobile number of Vol.Ravinder 719/HGV). Therefore, the attached complaint may be forwarded to W/SSP/UT Chd for taking necessary action against Vol. Sombir No.547/HGV and Vol. Ravinder 719/HGV posted in Police Station Sector 36 as deemed fit for the above alleged act please.

*(HARJIT KAUR)
Deputy Superintendent of Police,
Traffic(South), UT Chandigarh.
Dated:-2/2/2022”*

g) Consequent thereupon, a show cause notice dated 07.02.2022 was served upon the petitioner as to why he should not be discharged from service.

h) In response to the said show cause notice (SCN), reply dated 14.02.2022 was submitted by the petitioner and same is reproduced here under (Annexure R-3 appended with the reply):-

“Submitted that I, Vol. Ravinder Singh No.719, presently doing my duties at PCR Wing and before this, I was posted at Police Station-36. On dated 29-30.12.2021 night, I was deployed at 34-35 Light point duty (10 PM to 2 PM) alongwith the Traffic Staff and our Naka In-charge were ASI Ajit No.2143/CP and Const. Pawan Kumar No.4998/CP. Volunteer Sombir No.547 was also deployed at duty with me. Cars were checked by the Traffic Police and we were standing there to help them. In the mean time people known to Vol Sombir were came there and arguing with him on some topic and next day Sombir has told me that due to his Google pay was stucked, his friend ie. Gurpuran singh has transferred Rs.2000 at my mobile number through Google Pay which was taken out from my pocket and paid to Vol Sombir. I have no other information about the said money.

Written and read over and believed to be true and correct.

Attested

Sd/-

Sd/-

Vol. Ravinder Kumar No.719

Dated 14.02.2022

Mob. 9781285075”

i) Briefly, petitioner stated in the reply that some people known to HGV Somveer had come on spot in a car on the date of incident and on the very next day, HGV Somveer told the petitioner that one of his friend namely Gurguran Singh Dhanoa has transferred him Rs. 2,000/-, because his Google Pay Account is not working. Thus, said Gurguran Singh Dhanoa transferred the amount of Rs. 2,000/- to the petitioner's Mobile Number and further Somveer requested the petitioner to pay him the said amount of Rs. 2,000/- in cash.

j) However, being dissatisfied with the explanation tendered by the petitioner, Respondent No. 4 – District Commandant, Home Guards vide its order dated 04.03.2022 (Annexure P-1), discharged the petitioner along with his Senior Associate HGV Somveer by virtue of Section 9 (b) 27 of Punjab Home Guards Notification No.GSR-206/PA/8/47-S-9/63 dated 04.09.1963.

k) Against the said order, petitioner filed one appeal before the Home Secretary, Chandigarh, bearing Diary No. PA/HS/545590 dated 21.03.2022. In the meanwhile, one writ petition bearing No. CWP-4758-2022, was also filed before this Court, which was ordered to be dismissed as withdrawn, vide order dated 17.05.2022 (Annexure P-7), with liberty to pursue the appeal which is stated to have been filed before the concerned authority.

l) Thus, the order of discharge dated 04.03.2022 (Annexure P-1) now became the subject matter of the appeal before Home Secretary, Chandigarh, (Respondent No.2).

m) From the perusal of the reply filed by Respondent No.2, a fact emerges that vide letter dated 20.12.2022, Home Secretary, Chandigarh ordered the Commandant General Home Guards, to constitute a Committee for investigating the case thoroughly by including all the persons involved in this case, and then to submit the report complete in all respect along with recommendation of the Committee, within 30 days to the Administration.

n) In response to the said direction of Respondent No.2, a fresh Committee was constituted by Assistant Commandant General Home Guards, vide order dated 03.01.2023, comprising of:

1. Dy. S.P./PCC, UT, Chandigarh (Chairman)
2. Inspector, PCC, UT, Chandigarh (Member)
3. ASI Shyam Sunder, No. 1848/CHG (Member)

o) While conducting enquiry, following statements were recorded:

“i. Statement of Gurpuran Singh Dhanoa dated
17.01.2023

ii. Statement of Gurdeep Singh – Complainant dated
18.01.2023

iii. Statement of L/ASI - Yashvinder Kaur dated 31.01.2023

L/ASI Yashvinder Kaur stated that as per the record, near to the light point of Sector 34/35, ASI Ajit No.2743/CP and Constable Pawan 4998/CP were deployed at Naka and officials proceeded for their duty at Naka vide entry made in DDR No.108 dated 29.12.2021

iv. Statement of ASI Shiv Shamshu dated 31.01.2023 proving the deployment of the HGV Sombir and HGV Ravinder @ Ravinder Singh (petitioner herein) on nakka and the DDR recorded to that effect

v. Statement of the HGV Ravinder @ Ravinder Singh (petitioner herein) dated 09.02.2023

vi. Statement of HGV Sombir Sharma dated 10.02.2023

vii. Statement of Dhananjay Khimta dated 10.02.2023”

p) Thereupon, the afresh Inquiry Report dated 16.02.2023 (Annexure R-4) was prepared.

q) After presentation of the Inquiry Report dated 16.02.2023 (Annexure R-4), District Commandant, Home Guard Volunteers, Chandigarh (Respondent No.4), vide his letter dated 11.05.2023,

gave remark that both HGVs Ravinder @ Ravinder Singh and Somveer Sharma have been found guilty by the Inquiry Officer.

r) It is thereupon that the opportunity of hearing was again afforded to the petitioner on 12.07.2023. However, dissatisfied with the explanation given by the petitioner, appeal was dismissed by respondent No.2, vide its order dated 12.07.2023 (Annexure P-2) by affirming the order dated 04.03.2022 (Annexure P-1).

3. Both of these orders i.e. 04.03.2022 (Annexure P-1) and 12.07.2023 (Annexure P-2) have been impugned before this Court.

4. While assailing the impugned orders, Ms. Divya Sharma, Advocate, appearing on behalf of the petitioner argues that during the initial inquiry or even subsequently conducted re-inquiry on the directions of the Appellate Authority, no material evidence was collected against the petitioner showing his direct or indirect involvement in the alleged Corruption.

There is no evidence collected at any point of time, that petitioner, though being member of the nakka team, ever demanded or even expressed his indirect intention to demand any illegal gratification from the complainant - Gurdeep Singh or even Dhananjay Khimta, who both transferred an amount of Rs.1,000/- through google pay in the account of Gurpuran Singh Dhanoa.

Counsel also submits that as per the statement of complainant - Gurdeep Singh, sign of signal to stop was given by one person wearing *khaki* uniform, speaking in Hindi and that person who

stopped the car of the complainant, came to him and pointed out that the seat belt is loose and thus, there is need to pay the challan amount of Rs.3,000/-, for which he would be given due receipt. However, he gave an option that he can also settle the matter under the table by paying lesser amount.

This way, ultimately deal was settled for Rs.1,000/-.

As per the statement of the complainant, nowhere any demand has been raised by any second person except Somveer or no one else even came near to the complainant - Gurdeep Singh, to talk to him.

For perusal, relevant part of the translated version of the statement of Complainant - Gurdeep Singh recorded on 18.01.2023, appended with the writ petition as Annexure P-8, is reproduced hereinbelow:-

“Statement of Gurdeep Singh son of Shri Prithi Singh resident of House Number 2, Street No. 2, Lalluana, Village Road, Village Mansakhurd, District Mansa Age-26 years Mobile No. 7696782256

Stated that I am resident of the above mentioned address and for the past about one year I have been living on rent in house number 892, sector 78 Mohali. My Aadhaar card number is 93001869787 and my address on Aadhar card is house number 12A, Sector 51-A, Chandigarh. We are three brothers and sisters, from which Gagandeep Kaur is the eldest sister and Sarabjeet Kaur is younger to her and both of them are married. I am the youngest of all. After completing my graduation I am doing a private job at Global Punjab and also preparing for competitive examinations. On 29/30- 12-2021 after eating food in sector 34 I was going back with my friend Krishan who is now in New Zealand from Sector 34 to Sector 78 Mohali in my car number CH01AN-1331 Sunny Nissan and it was about 11:15 PM. When I was going back from sector 34, I took a right slip road from 34-35 light point towards Mohali then I saw that on the road towards Mohali from the light point at about 100 m there is police naka. Then a person who was in khaki uniform and was speaking in

Hindi gave me a signal to stop the car, the road was empty at that time. Only a few vehicles were passing. I stopped my car immediately on seeing his signal. The person who stopped my car came to me and said that the seatbelt I was wearing was loose. Because even after wearing the seatbelt it was loose from above. He also asked that from where I was coming and going where. He said that you should be challaned. I requested to him that there is some fault in the seatbelt and I will get it fixed and to this he said that you will have to be challaned and it is of ₹3000. Then he asked me that you want a challan or settling for it and said that the challan is of ₹3000 and I'll also have to go for paying the same so instead of giving that, give me ₹2000 to settle. After this I tried to bargain with him and told him that I am a student so please let me go and after that he agreed for ₹1000. I was not having any cash with me so he asked me that what option do you have. So I said I have Google pay. Then he told me to google pay ₹1000 on mobile number 7087383559, and then I sent him ₹1000 from my mobile number 7696782256 to the Number he told me which was 7087383559. And after that I left from there in my car. And after reaching back to my house in sector 78, Mohali from my mobile phone I emailed a complaint to DGP Chandigarh and other police officers I have seen that complaint in your file PW-202128742 dated 31-12-2021 today. This complaint was made by me. When I google paid 1000 on mobile number 7087383559 the name which was shown on the screen was of Gurpuran Dhanoa and I don't know Gurpuran Dhanoa. After registering the complaint the next day I received a message in an email that DSP Harjeet Kaur was appointed for enquiry on this complaint and I was also asked to join the enquiry to which I replied that I cannot join the enquiry because I don't have any time and if you want to ask something you can ask me on email only I'll answer that. After that I did not receive any message. ₹1000 which I transferred from my mobile number 7696782256 through Google pay to mobile number 7087383559 was the instructions of Sombir. I have never met and don't know Gurpuran Dhanoa. On 17/3/2022 I had given an affidavit because I thought that he might lose his job and I live here alone and come to Chandigarh alone and I am the only son of my mother and he may not harm me and to save his job. Written and read over and believed to be true and correct.

ATTESTED

Sd/-
Gurdeep singh

ATTESTED

Sd/-

18/01/23
Mob no. 7696782256”

5. The person in whose account, amount of Rs.1,000/- has been deposited by the two persons namely Gurpuran Singh Dhanoa also got recorded his statement (appended with the writ petition as Annexure P-10).

For the sake of convenience, translated version of the statement referred by the petitioner, is reproduced hereinbelow:-

“Statement of Gurpuran Singh S/O Parminder Singh R/O No. 25, village Makhanmajra, UT Chandigarh, Age 25 years & Mobile No. 7087383559

Stated that I am resident of the above mentioned address and live with my mother and father and I am studying in DAV sector 10 Chandigarh and pursuing MBA. We are two brothers and sisters. My sister Harsimran Kaur is elder to me and she is married. On 29/30-12-21 I was using my mobile number 7087383559 and I was at my house in village Makhan Majra and I was studying at that time. It was about 1 AM when Home Guard Volunteer Sombir of village Bahalana who was my friend from school time as we studied in the same class. He made a WhatsApp call from mobile number 8557036059 to my mobile number 7087383559 and he told me that you received a Google payment on your mobile number and forward it to Ravinder whose mobile number is 9781285075 because my Google pay is not working. So just after ending the call I sent the ₹1000/1000 which was received on my mobile to mobile no. 9781285075. This payment was received by me on 29-12-2021 on my google pay number 7087383559 at about 11:16 p.m. I received ₹1000 from Gurdeep Singh son of Shri Prithi Singh (Bank of Baroda) and the transaction number was 136315100011, and at about 11:53 PM I received ₹1000 from Shri Dhananjay Khimta (State Bank of India) and the transaction number was 136323876034. I transferred ₹2000 which I received from these two transactions on the instructions of Sombir on mobile number 9781285075 and the transaction number was UP1136472099869. I have already told all this on 7-1-2022 in my statement to DSP Harjeet Kaur. The affidavit which was submitted on 15/3/22 was given for the reason because I wanted to save the jobs of Sombir and Ravinder. I do not know Gurdeep Singh who sent me ₹1000 from mobile number 7696782256 on Google pay and I do not know Dhananjay Khimta who sent me ₹1000 on 29-12-2022 with transaction ID number 136323876634. I sent the amount

of both the transactions on the instructions of Sombir to Ravinder on Google pay.

Written and read over and believed to be true and correct.

ATTESTED

Sd/-

*Sd/-
Gurpuran Singh
17/01/23
Mob no. 7087383559.”*

From the statement of both these witnesses, nowhere it is revealed that anyone of them was earlier knowing the petitioner.

6. Further argues that from the statement of complainant - Gurdeep Singh and Gurpuran Singh Dhanoa (in whose account complainant transferred money), nowhere it is reflected that any of them had any contact with the petitioner at any point of time in past or had any exchange of words with the petitioner in regard to the transfer of Rs.2,000/- (Rs. 1,000/- + Rs. 1,000/-) through google pay mode.

Counsel for the petitioner, Ms. Divya Sharma, Advocate, further reads out the statement of HGV Somveer Sharma dated 10.02.2023 (Annexure P-9).

For the sake of convenience, the translated version of the statement is reproduced hereinbelow:-

“Statement of Somveer Sharma son of Shri late Shri Shiv Kumar Sharma, Resident of House Number 334 village Bahalana UT Chandigarh age 23 years Mobile Number 9877600318

Stated that I am resident of the above mentioned address and live with my mother, father, brother and sister

together. I joined Chandigarh Home Guard on 21/8/2020 and after my training I was posted at Police Station, Sector 36. On 29/30-12-2021 when I was doing general duty in Police Station Sector 36, I alongwith Vol. Ravinder Singh was sent to sector 34/35 dividing Road from 10 PM to 2 AM with Traffic Police in a joint Naka. From the traffic police there was ASI Ajit Singh and one other constable whose name is not known to me. The Traffic Police constable was the driver of the recovery van who went on an accident spot. I along with ASI Ajit Singh were standing on the Sector 34 side at the Chowk South End on 34/35 light point and were checking the vehicles which were going towards Mohali and Vol. Ravinder Singh was standing near his government Motor cycle on cycle Road of the sector 34 side. At about 11 or 11:30 PM a car from sector 34 came towards our Naka, I saw that the driver was not wearing the seatbelt so I gave him a signal to stop the car and told him that he was not wearing a seatbelt so he will be challaned, to which he requested that please settle without the challan but I said no to it. When I was talking to the driver of that car, ASI Ajit Singh was standing a little away from me holding e-challan machine and Vol. Ravinder was sitting on his government motor cycle on the cycle track. I informed the driver, whose name I later came to know was Gurdeep Singh, the fine for driving without seat belt but he told me to settle on the spot and told that he did not have any cash and offered to Google pay the amount. At that time my Google pay was not working on my phone so I gave him the phone number 7087383559 which is of my friend Gurburan Singh and told him to Google pay on that. On which he transferred ₹1000 through Google pay. Just after the transfer I confirmed about the transfer from Gurburan, but I do not remember that he called me or I called him or which type of call was made. And even before this I also asked some other car driver to transfer ₹1000 on Google pay of Gurburan Singh on the same night. And on phone I told Gurburan Singh to transfer the money which he received to Vol. Ravinder Singh's Google pay number but Vol. Ravinder Singh was not having any information about it, that why the money was transferred to his Google pay account. After the wrapping up of Naka we went on patrolling on the government motorcycle and after that I told Ravinder that some money is transferred to his Google pay account by my friend Gurburan so give me that back, in cash. On the next day he gave me ₹2000 in cash. On 29/30- 12-2021 night I stopped some vehicles and got them challaned from ASI Ajit Singh. The person named Gurdeep Singh who sent ₹1000 to Gurburan Singh on my instructions later on filed a complaint registered but we were not questioned about it. Only the show cause notice was received by us and after replying to that I along with Vol. Ravinder Singh were discharged. I was the one who stopped Gurdeep Singh and the other car driver

whose name is not known to me and I was the one who dealt with them and told them to transfer the money in Gurburan Singh's Google pay account and this was neither known to ASI Ajit Singh or Vol. Ravinder Singh. And on my asking Ravinder Singh returned ₹2000 to me. I have come here today to join the investigation on your instructions.

Written and read over and believed to be true and correct.

ATTESTED

Sd/-

Sombir Sharma

Sd/-

10/02/23

Mob no. 9877600318"

7. Thus, while reading out all these three statements along with the reply dated 14.02.2022, submitted by the petitioner to first show cause notice issued to him makes the picture clear that no substantial evidence was found against the petitioner herein. However, an assumption was raised against the petitioner due to the reason that admittedly, petitioner was present near the spot and ultimately, the amount of Rs. 2,000/- was transferred in the account of the petitioner by Gurburan Singh Dhanoa.

Counsel submits that although, there cannot be any denial to the factum of transfer of Rs. 1,000/- each by Complainant – Gurdeep Singh and Dhananjay Khimta to Gurburan Singh Dhanoa and the transfer of Rs. 2,000/- by Gurburan Singh Dhanoa to petitioner herein as already sufficient documentary evidence has been collected during the course of inquiry. However, question before the Inquiry Officer was to see whether any other substance has been collected by the Inquiry Officer to form an opinion by presuming that the said amount has been transferred with the

knowledge of the petitioner about the alleged purpose i.e illegal gratification.

8. Counsel for the petitioner also argues that service of the petitioner is governed by the provisions of the Punjab Home Guards Rules 1963, wherein Section 9 (b) 27 says as under:-

"Section 9 (b) 27. Dismissal- (1) any member may, for misconduct or for absence from duty without sufficient cause, be dismissed from service:

Provided that no order of dismissal shall be passed unless reasons of dismissal are recorded in writing and the member concerned has been given a reasonable opportunity of showing cause against the action proposed to be taken against him.

(2) The authority competent to pass an order of dismissal in the case of a Gazetted Officer shall be the Government and in the case of a Non-Gazetted Officer and other members, the Commandant General or the Gram Raksha Dal Chief, as the case may be.

(3) An appeal against an order of dismissal passed by the Commandant-General or the Gram Raksha Dal Chief shall lie to the government.

(4) The order of the Government passed under sub- rule (2) or sub rule (3) shall be final and shall not be called in question in any proceeding whatsoever."

Counsel further submits that aforesaid rule provides for recording of reasons in writing after giving reasonable opportunity of show cause against the action proposed to be taken before dismissal of Home Guard volunteer from service.

She submits that in gross violation of the rules, no reason has been recorded in the impugned order of discharge (Annexure P-1) to form an opinion for the dismissal of the service/discharge of service of the petitioner.

In support of the submissions, counsel relies upon **Didar Singh vs. Union Territory, Chandigarh (2020 (3) PLR 31**, wherein this Court (Punjab and Haryana High Court) held that because of the reason that the Home Guards are volunteers, it would not mean that they do not have any right whatsoever and thus, while exercising the power under Article 226 of the Constitution of India, High Court would not be bereft of the jurisdiction and the authority to exercise its power of judicial review.

9. Further submits that both the inquiries conducted in the present case suffer with the gross violation of the principle of natural justice, as no substance or statement of any of the witnesses was ever delivered to the petitioner.

Even, the statements recorded on different dates during both the inquiries were one sided and no chance whatsoever was ever afforded to the petitioner to raise any question to the witnesses or to conduct cross-examination after recording of the statement of such person. Thus, such an inquiry was nothing but an *eye-wash*.

Thus, submits that any kind of departmental inquiry, either small or bigger in scale, requires that the Principles of Natural Justice is followed and in its absence both the inquiries vitiate.

In this regard, reliance is placed upon the judgment of Hon'ble Apex Court titled as **Chandrama Tiwari vs. Union of India** 1988 AIR (SC) 117 : Law Finder Doc Id #80519.

Counsel also relies upon the judgment passed by Punjab and Haryana High Court in the case of **Karma Devi vs. Punjab National Bank and Others (Punjab and Haryana) 2018 (1) SCT 125:Law Finder Doc Id #932316.**

10. While countering the submissions addressed by counsel for the petitioner, Mr. Sanjiv Ghai, Advocate, appearing on behalf of the respondents i.e. UT, Chandigarh, produced the file of the inquiry report and referred the reply by submitting that factual sequence, makes the incident probable. In the incident, like in the present case, where both the HGVs are on duty together and co-employee of the petitioner demands an amount from the complainant, which is transferred in the account of some third person (Gurpuran Singh Dhanoa), and ultimately, said amount landed in the account of petitioner, clearly suggests the connivance and knowledge of both HGVs, namely, Ravinder and Somveer.

Further submits that the explanation given by petitioner, both the times, seems to be dis-satisfactory as well as contradictory and therefore, petitioner was rightly discharged from the service and the said order was further rightly affirmed by the Appellate Authority after conducting the inquiry afresh.

Inquiry file is also perused and examined by the Court.

Also submits that once the connectivity of facts is established with the documentary evidence i.e. the Bank account statement, petitioner is not entitled to claim innocence.

Moreover, main accused – Somveer Sharma has himself admitted his guilt during the course of inquiry and he has also been discharged from the service and petitioner also deserves the similar treatment.

11. This Court has gone through the petition, appended documents; written statement filed by the respondents and other documents in support of it and also perused the Inquiry file submitted to the Court by Mr. Sanjiv Ghai, Advocate, appearing on behalf of UT Administration.

Also considered the judgments cited by counsel for the petitioner.

No judgment has been cited by counsel for the respondents.

12. After deeply examining each and every aspect, this Court finds substance in the arguments addressed by counsel for the petitioner and such an opinion has been formed due to the following reasons:-

i) Lacunas in Inquiry:

In the case at hand, no evidence is collected during the course of inquiry that at the time of the incident, whether really the Google Pay Account of HGV Somveer Sharma was not in working condition.

Further, not a word is available on the record to indicate that at any point of time, petitioner had acquired knowledge about the truth of illegal demand of bribe of an amount of Rs.2,000/- (1,000/-+1,000/-) or

transferring of same to his account through Google Pay by some unknown person.

As per the Inquiry file and the stand of the respondents, it is only on being asked by HGV Somveer Sharma on next day that petitioner acquired the knowledge that the amount of Rs. 2,000/- is transferred in his account by someone, at the instance of HGV Somveer Sharma.

Therefore, a question arises in the mind of the Court, as to whether, any prudent person would voluntarily get the amount transferred in his own account which can be easily traced out through the bank statement, whereas the actual person demanding the amount, is not getting it deposited in his own account.

Thus, it builds up a situation to examine deeper the admitted facts and role of both the HGVs. HGV Somveer Sharma, who admittedly demanded the amount; did not allow the creation of any link/documentary evidence against himself, but he succeeds in creating such an evidence *qua* four other persons i.e. Gurdeep Singh (Complainant), Dhananjay Khimta (both of them Transferred Rs. 1,000/- each), Gurpuran Singh Dhanoa (who received Rs. 1,000/- twice and transferred Rs. 2,000/- in account of petitioner) and lastly, HGV Ravinder (petitioner herein).

Not only this, to save his own skin, HGV Somveer did not even care for his own colleague i.e HGV Ravinder (petitioner herein) who is a new incumbent and has joined the service only 14-15 months back and thus, succeeded in getting the amount of Rs.2,000/- transferred in petitioner's account without disclosing any truth to him.

Thus, the stand taken by the petitioner claiming himself to be an innocent person appears to be genuine and much near to the truth.

In other words, it does not appeal to the common sense that any prudent person would create a record against himself, by giving a clear escape route to his accomplish, that too, without even any substantial gain, to him.

ii) No admission on the part of Petitioner:

To check the argument of the respondents' counsel that the stand of the petitioner in the second statement is altogether different from the first clarification given by him on 04.02.2022 in the shape of reply to the show cause notice, this Court has carefully examined both the statements. From the perusal of both the statements, it transpires that the reply to the show cause notice dated 14.02.2022, was a limited response, wherein, explanation given is that HGV Somveer told the petitioner that his Google Pay account was not working and therefore, his friend Gurpuran Singh Dhanoa has transferred an amount of Rs.2000/- on Google Pay account of the petitioner. Subsequent thereto, an amount of Rs.2000/- was paid by the petitioner to HGV Somveer in cash.

In the subsequent statement dated 09.02.2023 made during inquiry proceedings, petitioner clearly mentions that he had handed over a cash amount of Rs.2000/- to HGV Somveer, who had got the same transferred from Google Pay account of Gurpuran Singh Dhanoa to petitioner's account. However, petitioner had no idea about the source of the money.

In none of the statements, any kind of admission in regard to having prior knowledge of the nature of the transaction or the purpose of the transaction has been admitted by the petitioner. Broadly speaking, both the statements do not lead to the conclusion in any manner that there is an admission of any guilt by the petitioner or even there is admission that he had any kind of prior acquaintance with any of the persons except HGV Somveer Sharma, who was his colleague.

iii) Non- Inclusion of ASI Ajit Singh and non-registration of criminal case:

As per the complaint, the person who demanded money from complainant was in *khaki* uniform and was speaking in Hindi dialect. There is no inquiry to that effect whether the *khaki* dress was worn only by HGV Somveer Sharma and no one else. Further, there is no inquiry from the angle that if *khaki* uniform was worn by all the three officials present on spot, then why ASI Ajit Singh was kept outside the cloud of suspicion on the first instance. In fact, initiation of inquiry assuming both the Home Guard Volunteers (HGVs) as culprits also gives an impression that ASI Ajit Singh was given a clean chit, right from the very beginning. It is undisputed fact that ASI Ajit Singh (2743/CP) was present on spot. Even during the course of hearing, no explanation was placed before the Court that despite being the Incharge of the Naka team and present on the spot, why he has not been involved during the course of inquiry.

Although, first inquiry report indicates that statement of ASI Ajit Singh was also recorded but said statement is neither available on the

record of the writ petition, and same has not even been appended with the written statement filed by the respondents, nor is available in the enquiry file, handed over to the Court. Thus, manner of initiation of inquiry and its proceedings is not beyond doubt.

It cannot be expected that an official of the rank of Home Guard Volunteer (HGV) would dare to ask for the bribe when his work is supervised and controlled by specialized police officer who is either standing beside him or only at the distance of few yards, as has been explained in the facts of the present case. This situation is not visualized that possibly, HGV Somveer Sharma never demanded bribe of Rs.1000/- from complainant - Gurpreet Singh, and even if such a demand was raised, it was under the instructions of his senior. In other words, possibility of connivance of HGV Somveer Sharma and Naka Incharge - ASI Ajit Singh cannot be ruled out. Might be, that to give an escape route to ASI Ajit Singh (2743/CP), Home Guard Volunteers (HGVs), including the petitioner have been made scapegoats. Therefore, this Court has all reasons to doubt the manner of initiation as well as conducting of the inquiry.

Even no step is taken by the Chandigarh Administration/Chandigarh Police to register a criminal case or to take any action against Complainant - Gurdeep Singh or Dhananjay Khimta under the Prevention of Corruption Act, 1988, or any other law, for giving the bribe amount of Rs.1000/- to Police officials in order to evade the wrath of law. Had a criminal case been registered, probably it would have been more clear, whether, other than the Home guard Volunteers

(HGVs), any other official including ASI Ajit Singh, was also involved in the said act or not.

iv) Violation of Principles of Natural Justice:

Significance of following principles of natural justice has been eloquently summed-up by His Lordships Justice Dr. Arijit Pasayat in the following words:-

“Natural justice is the essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental. The purpose of following the principle of natural justice is the prevention of miscarriage of justice.”

However, in the case at hand, it appears that the inquiry has been conducted in utter violation of the Principles of Natural Justice especially the principle of **audi alteram partem** i.e. no one should be condemned unheard.

Although, it has been projected that a valid inquiry has been conducted and the statements of all the concerned have also been recorded, but there is no material to show that after recording of the statement of witnesses, petitioner was ever afforded an opportunity/chance to cross-examine the witnesses or allowed to ask any question from them. In this regard, observations made by this Court (Punjab and Haryana High Court) in **Karma Devi's case (supra)** in paragraph Nos.25 and 26 are material, which also deals with several other judgments supporting its own conclusion. For the sake of convenience, Paragraphs No. 25 and 26 are reproduced hereinunder:

*“25. The petitioner's contention that the disciplinary authority failed to consider each of the contention raised in her reply on Inquiring Officer's report is concerned, it is evident from the order of the disciplinary authority and so also the respondents-Bank's counsel has admitted that the disciplinary authority has not considered the point-wise issues raised by the petitioner. At the same time, it was submitted that whatever the points raised by the petitioner before the disciplinary authority have been taken into consideration and decided by the appellate and reviewing authority, therefore, lacuna committed by the disciplinary authority has been fulfilled by the next higher authority like appellate and reviewing authority. Therefore, the petitioner's contention that disciplinary authority has not considered the points raised by the petitioner cannot be upheld and it has cured at later stage. When an order is based on certain grounds its validity must be judged with reference to the reasoned mentioned therein. Those reasons cannot be supplement by fresh reasons in the shape of affidavit or otherwise to justify the order as held by the Supreme Court in the case of **Mohinder Singh Gill v. Chief Election Commissioner, reported in (1978) 1 SCC 405**. In recent decision in the case of **T.P. Senkumar, IPS v. Union of India and others reported in 2017(2) S.C.T. 768 : (2017) 6 SCC 801**, Supreme Court in para no. 85 held as under:-*

"85. The law has been well settled for many years now that when an order is passed in exercise of a statutory power on certain grounds, its validity must be judged by the reasons mentioned in the order. Those reasons cannot be supplemented by other reasons through an affidavit or otherwise. Were this not so, an order otherwise bad in law at the very outset may get validated through additional grounds later brought out in the form of an affidavit."

*The object of disclosure of reasons is that one must have confidence in the quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the concerned authority has applied its mind or not? Also, giving reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a quasi-judicial order, even if it is an order of affirmation. Supreme Court in the case of **Ravi Yashwant Bhori v. District Collector, Raigad reported in (2012) 4 SCC 407** held that recording of reasons for a decision is held to be a part of principle of natural justice, Recording of reasons in cases on ere the order is subject to further appeal is very important from yet another angle. The authority ought to have the advantage of examining the reasons that prevailed with the court or the authority making the order. Supreme Court in the case of **Babulal v. State of Haryana***

*reported in 1991(1) S.C.T. 474 : (1991) 2 SCC 335 held that the party who is denied natural justice "need not establish particular prejudice for want of such opportunity" because "the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice has been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. The contention of the respondents-Bank is that appellate and reviewing authority have cured the defect committed by the disciplinary authority, therefore, there is no violation of natural justice. In this regard, it is to be noted that can failure of natural justice at the original stage be cured by the appellate body giving a hearing? **Failure of natural justice arises when either no hearing is given at all, or there has been some defect in the hearing procedure adopted, by the original adjudicative body.** In the first situation, the general rule is that a breach of natural justice at the original stage cannot be cured by sufficiency of natural justice at the appellate stage. Because of the failure of natural justice, the order of the lower body is a nullity, and even if this order is affirmed by next higher authority, or there is natural justice provided by the next higher authority, neither the order of the lower, nor of the higher authority can be sustained. The orders of both, lower as well as higher authority must fall. Justice MEGARRY, ruled in **Leary v. National Union of Vehicle Builders, reported in (1970) 2 AIL ER 713** held as under:-*

"If one accepts the contention that a defect of natural justice in the trial body can be cured by the presence of natural justice in the appellate body this has the result of depriving the member of his right of appeal from the expelling body. If the rules and the law combine to give the member the right to a fair trial and the right of appeal, why should he be told that he ought to be satisfied with an unjust trial and a fair appeal? Even if the appeal is treated as a hearing de novo, the member is being stripped of his right to appeal to another body from the effective decision to expel him."

*The Calcutta High Court in the case of **Serajuddin & Co. v. State of Orissa reported AIR 1974 Calcutta 296** ruled that if the original order was a nullity, an order passed by the higher authority in revision could be of no greater value or effectiveness even though the latter order complied with natural justice, in such a case, the original order did not get merged with the order passed in revision. "If the foundation of a structure is removed the superstructure cannot stand and must collapse." Therefore, if the order of the lower authority could not be saved and sustained, the order of the higher authority made in revision must also fall along with it.*

The principle that an initial order which was null and void could not become valid by confirmation by a higher authority on appeal or review. Supreme Court in the case of ***Oryx Fisheries Private Limited v. Union of India and others reported in 2011(5) RCR (Civil) 495 : (2010) 13 SCC 427*** in para nos. 41, 43 to 45 held as under:-

"41. In the instant case the appellate order contains reasons. However, absence of reasons in the original order cannot be compensated by disclosure of reason in the appellate order.

43. For the reasons aforesaid, this Court quashes the show-cause notice as also the order dated 19.3.2008 passed by the third respondent. In view of that, the appellate order has no legs to Stand and accordingly is quashed.

44. We are constrained to observe that unfortunately this aspect of the matter was not considered by the High Court. We cannot, therefore, approve the order of the High Court and the same is accordingly quashed. The cancellation of the registration certificate of the appellate is set aside and we declare the registration to be valid if it is not vitiated for any other reason.

45. We, however, make it clear that if the authorities are so inclined, they can proceed from the stage of showcause notice afresh but strictly in accordance with law and following the fair procedure indicated in this judgment."

26. In view of above facts and circumstances and certain provisions which have not been followed in the inquiry as well as non-consideration of the petitioner's contentions by the disciplinary authority on the Inquiring Officer's report, orders dated 02.08.2008, 11.10.2008 and 30.11.2009 passed by the disciplinary, appellate and reviewing authority (Annexures P/13, P/15 and P/16 respectively) Are hereby set aside"

Moreover, in the present case, neither any pleading in the written statement nor any material in the inquiry file is available to reach to the conclusion that the statement of the witnesses were ever made available to the petitioner, before passing the order of dismissal of the petitioner.

Thus, in the case at hand, there has been a clear violation of the Principles of Natural Justice.

v) Non-Compliance of Punjab Home Guards Rules, 1963:

Undisputedly, the Home guard volunteers (HGVs) in Chandigarh are governed by the provisions of The Punjab Home Guards Rules, 1963 (hereinafter referred as Rules), wherein, as per proviso of Section 9(b) 27 (already reproduced in the foregoing paragraphs), no order of dismissal can be passed unless reasons for dismissal are recorded in it. In the order of dismissal/discharging from service and even the dismissal of appeal by respondent No.2, no reason has been assigned for the dismissal except that the reply submitted by the petitioner is not satisfactory. No reason has been recorded that on the basis or what material/evidence, petitioner has been found guilty and for what reasons the explanation/reply given by him is unacceptable/ unbelievable/ non-satisfactory. This Court (Punjab and Haryana High Court) in its judgment titled as **Didar Singh Vs. Union Territory of Chandigarh and others (2020-3) 199 PLR 031**, while dealing with a similar issue, gave its observation qua the applicability of the Rules and held that action taken therein is subject to power of judicial review bestowed by Article 226 of the Constitution to the High Court. Relevant paragraph No. 10 of the aforesaid judgment is reproduced hereinbelow:

“10. It is true that as per the observations of this Court in the above referred judgment, the nature of appointment and the status of a Home guard Volunteer could not be considered permanent, temporary, ad hoc or dailywage employee but the services rendered by him are governed by the provisions of the statute as the Punjab Home Guards Organization is constituted under the Punjab Home Guards, Act, 1947 (hereinafter

referred to as '1947 Act). The 1963 Rules have been framed in exercise of the powers conferred under Section 9 of the 1947 Act. All appointments are made to the Home Guards Volunteers under this 1947 Act and 1963 Rules, which admittedly are applicable to the Chandigarh Home Guards. Merely because, they are volunteers does not mean that they do not have any right whatsoever and the authority while exercising its powers under 1947 Act and 1963 Rules, can act arbitrarily ignoring the provisions of the said Act and Rules. In case an employee approaches the Court with a grievance alleging violation of the provisions of the above Act and the Rules, this Court in exercise of its power under Article 226 of the Constitution of India as conferred, would not be bereft of the jurisdiction and the authority to exercise its power of judicial review. The Court may, in the given facts and circumstances of the case, refuse or refrain itself to exercise its power to delve into the matter, however, it cannot be said that the volunteers serving the Home Guard Organization have no right as far as their services are concerned and are at the mercy of the officers, who may exercise their discretion at their whims and fancies leaving the helpless volunteers without any remedy."

While dealing with the issue of mandatory provision of issuance of show cause notice as per Rules, in paragraph No.14, this Court held that the recording of reasons after giving reasonable opportunity of showing cause is mandatory. For the sake of convenience, paragraph No.14 is reproduced hereinbelow:

"14. As per the above Rule, if an order of dismissal has to be passed, firstly reasons have to be recorded and the member concerned has to be given reasonable opportunity of showing cause against the action proposed to be taken against him. Admittedly, no such show cause notice or personal hearing has been given to the petitioner. It is also admitted that the action taken against the petitioner was for the misconduct i.e. registration of an FIR against him under the Punjab Excise Act and for his absence from duty, which would fall under the provisions of Rule 27 of 1963 Rules."

While observing that the inquiry conducted in the present case appears to be a mere formality, this Court is guided with the principle laid down by Hon'ble the Apex Court in its judgment **Chandrama Tewari's case (supra)** in which, while dealing with the

principle laid down in '*Union of India Vs. T.R. Verma*' (1958) SCR 499,

Hon'ble the Apex Court in Paragraph No. 9 observed as under:

“9. It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges proved against the officer, the enquiry would be vitiated for the violation of principles of natural justice. Similarly, if the statement of witnesses recorded during the investigation of a criminal case or in the preliminary enquiry is not supplied to the delinquent officer, as that would amount to denial of opportunity of effective cross-examination. It is difficult to comprehend exhaustively the facts and circumstances which may lead to violation of principles of natural justice or denial of reasonable opportunity of defence. This question must be determined on the facts and circumstances of each case. While considering this question it has to be borne in mind that a delinquent officer is entitled to have copies of material and relevant documents only which may include the copy of statement of witnesses recorded during the investigation or preliminary enquiry or the copy of any other document which may have been relied in support of the charges.”

13. CONCLUSION:

Thus, this Court is finally of the view that no specific Charge-sheet has been issued in the present case, and hence, the allegation levelled against the petitioner itself is unclear and therefore, same is not reliable to the extent that the services of an employee could be dispensed with.

Otherwise also, manner of conducting of inquiry including its initiation is full of fault, and neither the Principles of Natural Justice nor the Rules, 1963, have been followed in its letter and spirit.

With all the aforementioned reasons recorded hereinabove, and being supported with the judgments discussed herein, prayer made in the writ petition succeeds.

Consequently, impugned order dated 04.03.2022 (Annexure P-1) passed by the District Commandant Home Guards, Union Territory, Chandigarh and the order dated 12.07.2023 (Annexure P-2) passed by Home Secretary, Chandigarh Administration, are hereby quashed.

Before parting with the judgment, it is important to note that during the course of hearing, one file containing the complete papers of inquiry conducted in the complaint made by Sh. Gurdeep Singh against Somveer Sharma and Ravinder Kumar (petitioner herein) was produced by Mr. Sanjeev Ghai, learned counsel for the official respondents, which was retained by this Court, for perusal and dictation of the judgment.

It is directed that said file be returned to Mr. Sanjeev Ghai, under proper receipt, immediately.

Disposed of.

01.03.2024

Lavisha/rashmi

(SANJAY VASHISTH)
JUDGE

Whether speaking/reasoned

✓ Yes/~~No~~

Whether reportable

✓ Yes/~~No~~