

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(108)

LPA-68-2023 (O&M)
Decided on : 02.04.2024

Ved Parkash

.....Appellant(s)

Versus

Additional Chief Secretary-cum-Financial Commissioner, Haryana &
others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present: Mr.Anurag Goyal, Advocate for the appellant (s).

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-215-LPA-2023

1. Application for condoning the delay of 49 days in filing the appeal is allowed in view of the averments made in the application duly supported by affidavit of the appellant. Delay of 49 days in filing the appeal is hereby condoned.

2. CM stands disposed of.

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3. Consideration in the present appeal is to the judgment dated 12.09.2022 passed by the Learned Single Judge in CWP-29349-2017 whereby the order of dismissal of the appellant who was appointed as Patwari in the Revenue Department on 09.07.1997, was upheld.

4. The Learned Single Judge upheld the dismissal order dated 21.11.2014 (Annexure P-6) and the 2 orders in appeal dated 10.07.2015

(Annexure P-7) and dated 20.07.2017 (Annexure P-8), passed by respondent No.1 while recording the finding that the dismissal was on account of the demand made for release of the compensation amount on account of acquisition of the land acquired for NH-71A Bypass which had been recorded in a mobile phone by the complainant. An opinion having been taken from the FSL, Madhuban which came to the conclusion that the voice of the mobile was similar to the voice recorded in the CD and therefore, the charge-sheet having been proved, the Learned Single Judge did not find it prudent to interfere in the order of dismissal. It was kept in mind the fact that matters of bribe affect the society and has to be dealt with seriously and with iron hand so as not to give wrong signal to others. It was held that the voice recorded by transmitting it to CD had been sent to the laboratory for verification and despite the transmission, unimpeachable finding had been rendered that voice samples had matched as subsequently the appellant himself was asked to give his voice sample.

5. Counsel for the appellant has vehemently submitted that it is a case of probability while referring to the report dated 08.03.2013 (Annexure P-4) of the Enquiry Officer who was the City Magistrate, Rohtak and thus submitted that there was no complaint against the appellant earlier and there was no allegation that the amount had been actually received and therefore, the extreme punishment of dismissal from service should not have been imposed keeping in view the fact that the appellant had been in service since 1997.

6. From a perusal of the paperbook, it would be crystal clear that the appellant herein had demanded twenty-five paisa out of every one rupee for the release of the amount of compensation for the land acquired

which would be clear from the complaint made to the Collector on 28.03.2011 (Annexure P-1). Apparently the appellant was proceeded against under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 (for short, the 'Rules') and the matter was enquired into. The Enquiry Officer found that the demand had been made by the Patwari and the landowners had not given any amount and the news had been published in the 'Dainik Bhaskar' regarding the recording of the voice in the mobile. Resultantly, he came to the conclusion that technical analysis whether the voice recorded in the mobile was of the appellant or not was only to be verified by the specialist. Resultantly, directions were issued to send the sample to the FSL, Madhuban. The said FSL report dated 09.01.2012 opined that the original CD was in Haryanavi language and was difficult to understand and it was impossible to translate the same into Hindi and verify whether the voice recorded belongs to the appellant or not.

7. Eventually, the appellant was directed to give sample voice to the Director, FSL, Madhuban on 12.09.2012 and the same was recorded. The report which was taken into consideration by the Enquiry Officer on 08.03.2013 reads as under:

“LABORATORY EXAMINATION

The utterance spoken by Ved Parkash, were segregated from audio CD marked exhibit-Q1. The prominent auditory features in the utterance of speaker in questioned voice marked Q1 were noted. Similar process was adopted for auditory analysis of specimen voice marked S2 in the Audio CD marked exhibit S2. The phonetic and linguistic features of questioned voice marked Q1 were marked Q1(a1), Q1(a2), Q1(a3), Q1(a4) and Q1(a5), similar common words taken from specimen voice marked exhibit – S2 were marked S2(a1), S2(a2), S2(a3), S2(a4) and S2(a5).

These utterances marked Q1(a1), Q1(a2), Q1(a3), Q1(a4) and Q1(a5), S2(a1), S2(a2), S2(a3), S2(a4) and S2(a5) were subjected to spectrographic analysis on computerized voice spectrograph for their voice gram. It was found that acoustic features namely formant frequency distribution, intonation pattern, frequency time co-ordination and other features of questioned voice samples marked Q1(a1), Q1(a2), Q1(a3), Q1(a4) and Q1(a5), corresponds with their respective features in the specimen utterance marked S2(a1), S2(a2), S2(a3), S2(a4) and S2(a5) respectively.

RESULT OF EXAMINATION

1. The auditory examination of questioned and specimen voice of Ved Parkash recorded in CD marked exhibit – Q1 and Audio CD marked exhibit – S2 reveals that questioned voice marked – Q1 are similar to the specimen voice marked – S2 in respect of linguistic and phonetic features.
2. The spectrographic analysis of questioned utterances marked Q1(a1), Q1(a2), Q1(a3), Q1(a4) and Q1(a5) and specimen utterances marked S2(a1), S2(a2), S2(a3), S2(a4) and S2(a5) reveals that these are similar in respect of their formant frequency distribution, intonation pattern and other general visual features in the voice gram. Hence the voice marked Q1 is the probable voice of same person whose voice is recorded in the Audio CD marked exhibit – S2.

Therefore, on the basis of analysis report the charge against Ved Parkash, Patwari is proved.”

8. On the basis of the said adverse enquiry report, show cause notice was issued to the appellant. The District Collector referred the matter to the District Attorney to take his legal opinion that then came to the conclusion that the act involved moral turpitude and placed reliance upon the judgment passed in **Parvesh Vs. State of Haryana & others, 2009 (4) SCT 445** and passed the order of dismissal under Rule 4(2)(x) of the Rules holding him guilty of moral turpitude.

9. The appeal was dismissed by the Commissioner on 10.07.2015 (Annexure P-7) on the ground that it was a serious misconduct

and amounted to moral turpitude and there was no question of interference. Before respondent No.1, an opportunity of personal hearing was given and a finding was recorded that there was an admission that it was his voice making the demand. The finding recorded by the said 2nd Appellate Authority reads as under:

“Sh.Ved Parkash Patwari has filed the second appeal before me, for setting aside the order dated 10.07.2015 passed by Commissioner Rohtak, Division Rohtak and the order dated 21.11.2014 passed by Collector Rohtak, upon which the comments from Commissioner Rohtak, Division Rohtak were sought. After receiving the comments, Sh.Ved Parkash, dismissed Patwari, was heard in person on 24.05.2017. During hearing, he himself admitted that the voice which was recorded in the mobile for demanding the five percent amount in lieu of the disbursement of compensation belongs to him, but he stated that it does not proved to receive the amount from the landowners. After hearing the appellant in person and perusing the record carefully and admitting his voice recorded in the mobile, I have come to the conclusion that the demand of bribe from the landowners show the serious misconduct and it comes under moral turpitude, therefore, I do not find any force in the appeal to interfere in the order dated 21.11.2014 passed by Collector Rohtak and order dated 10.07.2015 passed by Commissioner Rohtak, Division Rohtak and hereby dismiss the appeal.”

10. In the writ petition, there is no such averments made that the finding recorded by the second appeal was incorrect in any manner. It is thus apparently the case of the appellant that there was only a demand but no receipt of the amount. Thus, we are of the considered opinion that the charge against Government employee is to be proved on the basis of preponderance of probabilities in departmental proceedings as per the settled law, unlike in criminal prosecution where it is to be established beyond the shadow of doubt. In such circumstances, keeping in view the

above background and the fact that the expert had come to the conclusion that the voice recording is that of the appellant and the stand that there was no receipt of the amount of bribe, the findings which have been recorded are apparently on the ground that there is a serious misconduct by the Government employee demanding bribe from the landowners who were aggrieved by the action of the State of Eminent Domain acquiring their land and faced with the demand by a Revenue Officer being asked to cuff-up the amount having lost their land. The helplessness of the complainants in such a situation and the misuse of the authority by the appellant is writ large.

11. In such circumstances, keeping in view the settled law that it is beyond the scope of judicial review to interfere in the absence of any argument raised that the procedure followed was violative of the principles of natural justice and the appellant was prejudiced in any manner, we do not think that it is a fit case to interfere in the findings recorded on the departmental proceedings which have been duly upheld by the Learned Single Judge. Reliance can be placed upon the judgment rendered by the Apex Court in **B.C. Chaturvedi Vs. Union of India and others, (1995) SCC (6) 749**, wherein the Apex Court has held that the interference by the Writ Court is permissible when the punishment is found shockingly disproportionate. Relevant portion of the judgment reads as under:

“18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review,

cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases. Impose appropriate punishment with cogent reasons in support thereof."

12. Resultantly, in view of the above discussion, finding no merit in the present appeal, the same is hereby dismissed in limine.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

02.04.2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No