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

CWP-26167-2023

Date of Decision:22.04.2024

BIKRAM PAL

..... Petitioner

Versus

UNION OF INDIA AND OTHERS

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Gurpreet Singh, Advocate and
Mr. Jaskaran Singh, Advocate
for the petitioner.

Mr. Shubham Thakur, Central Govt. Counsel
for the respondents-UOI.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of:

(i) Order dated 07.01.2023 (Annexure P-2) passed by respondent No.3 whereby he was dismissed from service.

(ii) Order dated 28.03.2023 (Annexure P-3) whereby respondent No.4 has dismissed his appeal.

(iii) Order dated 13.07.2023 (Annexure P-4) whereby respondent No.5 has dismissed his revision petition.

2. The petitioner on 15.04.2009 joined CRPF as Constable. During 2017-2018, he was posted at 13th Battalion, Chandigarh, Sector 43, Chandigarh. On account of impersonation, he was awarded punishment of 25 days sentence. It is apt to mention here that he had impersonated himself as Rakesh Kumar, Additional Director General of

Police, Punjab.

3. Joint Secretary to Prime Minister of India vide communication dated 21.04.2022 informed Secretary, Ministry of Home Affairs that a person using Mobile Number 7009808342 has called Shri Manoj Meena, IPS posted at Chandigarh and asked him to transfer a police Constable. The said letter moved from one office to another which culminated in initiation of departmental enquiry against the petitioner. The respondent examined various witnesses and came to a conclusion that petitioner has repeated the same offence i.e. impersonation which he had committed on earlier occasions. On the basis of report of Enquiry Officer, he came to be removed from service by order dated 07.01.2023 (Annexure P-2). Feeling aggrieved from order of Disciplinary Authority, he preferred an appeal before Appellate Authority which came to be dismissed vide order dated 28.03.2023 (Annexure P-3). He further preferred revision which also came to be dismissed vide order dated 13.07.2023 (Annexure P-4).

4. Mr. Gurpreet Singh, Advocate submits that petitioner was not afforded proper opportunity to put forth his stand. The person to whom alleged call was made was never examined. The Joint Secretary, Prime Minister of India was not examined. The Telecom Company was not asked to supply call details as well as location of the mobile phone caller, thus, the entire proceedings were mere eye wash and he has been punished in haste.

5. Mr. Shubham Thakur, Central Govt. Counsel submits that respondent has followed proper procedure. The Enquiry Officer examined different witnesses who categorically disclosed not only

previous conduct of the petitioner but also his alleged conduct. He did not cross-examine witnesses, meaning thereby, he accepted their deposition. The respondent is a disciplined force and petitioner by impersonating has caused loss of reputation to it. His conduct cannot be visited with lenient punishment. He does not deserve to be retained in the force.

6. I have heard arguments of both sides and scrutinized record with their able assistance.

7. Concededly, the petitioner was working with respondent which is an armed and disciplined force. Every member of the force is bound to maintain high standards of discipline which are foundation of every force. The petitioner in his statement has admitted use of mobile number in question. The matter started from the office of Prime Minister of India. The allegations were enquired by higher officers and during the course of enquiry many witnesses were examined. The petitioner did not ask even a single question from the witnesses, though he was granted opportunity to cross-examine them. He preferred appeal as well as revision before higher authorities who had examined his each and every submission. All the authorities have found that petitioner is a habitual offender. Despite being awarded punishment of 25 days sentence on the earlier occasion, he did not mend his behavior. Every time, he posed himself as senior officer like Special General of Police, CRPF, ADGP, Punjab etc.

8. It is settled proposition of law that scope of interference at High Court level against departmental proceedings is very limited. High Court is not supposed to re-appreciate evidence led during the course of departmental enquiry. High Court while exercising its jurisdiction under

Article 226 of the Constitution of India can examine whether there is violation of any prescribed procedure or there was *mala fide* on the part of authorities or the official has been victimized.

A two-judge Bench of Supreme Court in *Union of India and others vs. Subrata Nath, 2022 LiveLaw (SC) 998* while advertng with scope of interference under Article 226 of the Constitution of India in disciplinary proceedings has held that departmental authorities are fact finding authorities. On finding the evidence to be adequate and reliable during the departmental enquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. The Hon'ble Supreme Court has considered its judicial precedents including a two-judge Bench judgment in *Union of India and Others v. P. Gunasekaran.* The relevant extracts of the judgment read as:

“19. Laying down the broad parameters within which the High Court ought to exercise its powers under Article 226/227 of the Constitution of India and matters relating to disciplinary proceedings, a two Judge Bench of this Court in Union of India and Others v. P. Gunasekaran held thus:

“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.”

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22. 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.”

- 9. In the case in hand, this Court finds that petitioner in 2018 was subjected to sentence of 25 days on account of impersonation. The higher officers of CRPF during enquiry found that he on other occasions as well, posed himself as Additional Director General of Police or Special General of Police, CRPF. He was subjected to impugned punishment on

account of posing himself as Joint Secretary, Prime Ministry of India. The act and conduct of the petitioner does not warrant leniency. There is no illegality in the impugned order. The respondent has followed due procedure and petitioner was granted reasonable opportunity to put forth his stand. He was extended opportunity to cross-examine witnesses, however, he did not ask even a single question from witnesses which tantamount to his consent to alleged offence.

10. In the wake of above discussion and findings, the present petition deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

22.04.2024
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Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>