

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH.

120

CWP-314-2024 (O&M)..
Date of Decision: 27.02.2024.

NARINDER KUMAR

... Petitioner(s)

Versus

PUNJAB AND HARYANA HIGH COURT AND ANOTHER

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Ms. Harmanpreet Kaur (Simmi), Advocate,
for the petitioner.

Mr. Kshitij Sharma, Advocate,
for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present writ petition is to the order dated
19.09.2023 (Annexure P-19) passed by respondent No.1 whereby the
punishment of removal from service has been imposed upon the petitioner.

2 Learned counsel for the petitioner contends that the petitioner
is a professional National Trade Certificate holder of two years course in
the trade of Refrigerator and A.C. Mechanic from the Department of
Industrial Training and Vocational Education, Haryana. Pursuant to the

advertisement for the post of Peon-Technical (AC cum Refrigerator) in the year 2011, the petitioner had submitted an application dated 05.02.2011. He was issued a provisional card to appear in the interview scheduled to be held on 24.05.2012. Upon completion of the entire selection process, the petitioner was appointed w.e.f. 04.06.2012. It is contended that on 04.02.2019 and 05.02.2019, the petitioner was asked by his seniors to sign a report of the Air Conditioners and other material which were considered as a scrap and was not in a working condition. He refused to sign the same and insisted that he would first carry out checking of the said A.Cs. before signing the report. Due to refusal by the petitioner to sign the report, his seniors started misbehaving with him. He was taken by a shock and surprise when he was served a Memo No.5524/E.I./V.C.(4-E) dated 28.02.2019, seeking his explanation for his conduct on 04.02.2019, 05.02.2019, 07.02.2019 and 26.01.2019. She submits that the aforesaid explanation had been called for only as a counter-blast after the incident of 04.02.2019, and 05.02.2019 and not for any mis-conduct of the petitioner at any time prior thereto despite the petitioner having served for more than 07 years. The petitioner submitted a detailed reply to the said show-cause-notice along with the conversation available with him between him and his seniors.

3 Another explanation was sought from the petitioner on 20.05.2019 vide Memo No.1753/5/01/E.I./V.C. (4-E) as to why he did not receive the call made by the Chief Court Officer (Maintenance). A pointwise detailed reply was submitted by the petitioner on 23.05.2019 along with the supporting Annexures to explain his position. She contends that thereafter the petitioner sought compensatory leaves from the Clerk

vide application dated 15.07.2019 on the basis of circular dated 18.08.2003, however, the petitioner was served with an order dated 30.07.2019 whereby the petitioner was shifted from the cadre of Peon (Technical) to the cadre of Peon (Pool) till further orders and that the petitioner was directed to draw the salary in his own cadre minus the allowances which are admissible to him as Peon (Technical). An appeal was thereafter filed by the petitioner before the Chief Justice on 30.07.2019 but the same was seen and no action was taken thereupon. She contends that since the petitioner had already been shifted from the post of Peon (Technical) to the Peon (Pool) on 30.07.2019, hence, the disciplinary proceedings had already been initiated against the petitioner. She also contends that the said disciplinary proceedings were also in violation of the procedure prescribed by law. The same was challenged by the petitioner by filing CWP-36793-2019 in which notice of motion was issued.

4 During the pendency of the said petition, he was again served charge sheet vide No.377/Spl./E/I/V.B(4-E) dated 23.12.2021 under Rule 5 read with Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules 1970 and Rule 35 of the High Court establishment (Appointment and Conditions of Services) Rules, 1973. The petitioner was directed to submit his reply to the above said charge sheet which was filed on 06.01.2022 pointing out that punishment of shifting of the petitioner from Peon (Technical) to Peon (Pool) has already been imposed upon him vide order dated 30.07.2019 and that separate proceedings could not be initiated for the same cause.

5 A regular Departmental Enquiry was, however, ordered and Ms. Rattan Kaur, Joint Registrar, was appointed as an Enquiry Officer to hold an enquiry in accordance with the Punjab Civil Services (Punishment and Appeal) Rules 1970. The petitioner thereafter submitted an application on 01.06.2022 requesting to engage a counsel, however, the said application was declined vide letter No.2281/Spl./E.I./V.C.(4-E) dated 08.07.2022. The Enquiry Officer directed the petitioner to appear before her for regular departmental enquiry vide letter dated 11.07.2022. Similar letter was also issued on 01.08.2022, however, as the petitioner was unwell, he requested that the matter be adjourned. The said request was declined for no valid cause and by a separate order, the evidence of the petitioner was also directed to be closed.

6 An application was thereafter submitted by the petitioner for recalling of the witnesses for cross-examination and also for engaging an Advocate to assist along with a request to change the Enquiry Officer. Considering the above said application, the Enquiry Officer was changed and vide order dated 18.10.2022 another Joint Registrar was appointed as Enquiry Officer. The said Enquiry Officer completed the enquiry proceedings and submitted his report on 09.11.2022 as per which the charges were returned as proved.

7 A second show cause notice was thereafter served upon the petitioner on 11.11.2022 calling for his reply thereupon. The Enquiry report was also forwarded to the petitioner. In response to the above, the petitioner submitted his response on 17.11.2022 wherein he had specifically averred

that the Enquiry Officer has concluded the enquiry proceedings in a hasty manner and with a pre-determined notion and that too in a single sitting without affording an opportunity of hearing to the petitioner and without following Principles of Natural Justice. A detailed reply was also submitted on 23.11.2022, to the above said show cause notice.

8 It is contended that without discussing the objections taken and the reply filed by the petitioner, the punishment of dismissal from service was imposed upon the petitioner.

9 Counsel for the petitioner further contends that the above said order of dismissal from service was being imposed upon the petitioner notwithstanding that it is a case of double jeopardy and that the petitioner has already been punished by transferring him from Peon (Technical) to Peon (Pool) and that the reply submitted by the petitioner was also not considered.

10 She further submits that yet another charge sheet was served upon the petitioner wherein it was alleged that he has misbehaved with his seniors. A show cause notice for dismissal from service was served upon the petitioner and the petitioner was called for personal hearing before the Chief Justice vide communication dated 17.08.2023. At the same time, the Joint Registrar (Vigilance and Enquiry) was also appointed as Enquiry Officer with regard to the charge sheet dated 24.02.2023, to which the petitioner submitted his representation dated 28.08.2023 and tendered unconditional apology. However, vide order dated 19.09.2023, punishment of removal from service was imposed upon the petitioner with immediate

effect. She argues that the above said punishment of dismissal has been imposed without providing a fair opportunity and complying with the principles of natural justice. She submits that there is no previous default on the part of the petitioner and that the punishment of dismissal from service has been imposed on a single instance of default and said punishment is thus excessively harsh and the golden hand rule for imposition of punishment has not been followed.

11 Learned counsel for the respondents, who is on advance notice contends, that the procedure as prescribed under the Punjab Civil Services (Punishment and Appeal) Rules 1970 was duly followed and that the petitioner has been a habitual offender and has reflected his gross disregard to the authority. He was firstly served with a charge sheet on the following articles of charge:-

1. You, Sh. Narinder Kumar, Peon, were directed by Chief Court officer (Mtc.) on 06.02.2019, to check and report about the condition of Old Air Conditioners, Mini Refrigerators and Stabilizers lying in the store at High Court Extension Building, Sector 17, Chandigarh and at around 4:30 PM, you were telephonically directed to submit status report regarding the same but you neither came to High Court Office nor responded to the repeated calls made to you by Court Officer (Mtc.). Further, on 07.02.2019, when you were asked to explain your position in the matter, you flatly refused, in front of all members of the Court Officer (Mtc.) Branch. On 08.01.2019, you were deputed at the camp office of Hon'ble Mr. Justice Kuldip Singh (since retired) at House No. 1271, Sector 19, Chandigarh to fill distilled water in the battery of inverter. There also, you flatly refused to perform the assigned work.

Further, on 25.01.2019 you were directed to come on duty in the High Court on the occasion of Republic Day celebration, but you refused to discharge your official duties. Similarly, on another occasion you were asked to install one MIC for the use of Hon'ble the Chief Justice in New Conference Hall, to which, you flatly refused by saying that you do not know how to install MIC. All these incidents mentioned above are an indication of your lackluster attitude and disrespect to the official commands. As such you have failed to keep utmost devotion to duty as expected from a Government Employee and hereby you have acted in a manner unbecoming of a Government Employee.

2. That on 07.07.2018, an altercation took place between you and Sh. Amrik Singh, Peon Technical (AC Mechanic) on some matter, you had hit him with a tube rod on arm in the presence of Sh. Som Nath and Sh. Baljinder Singh, and resultantly Sh. Amrik Singh got injured and suffered four stitches. Another similar trait of showing that you are not a team player is that you are habitual of recording conversations and due to this habit of yours, other three Peons(Technical (AC Mechanic)) had shown their inability to work with you. As such you have shown your attitude of non-cooperation and in- submissiveness and inability to work with others. Thereby you have acted in a manner unbecoming of a Government Employee.

3. That as per report dated 16.03.2019 submitted by Court Officer (Mtc.), you were deputed for attending complaints pertaining to the residences of Hon'ble Judges situated at Sector 24, Chandigarh and a complaint of Air Conditioner from the residence of Hon'ble Judge, situated at Sector 24 was received at about 2:30 PM. When you were asked about your whereabouts and you informed that you are present in Sector

24, Chandigarh. Being skeptical about the truthfulness of the same, you were asked to intimate your exact location, to which you had told that you left Sector 24, Chandigarh and were near Tribune Roundabout, Sector 29, Chandigarh. Further as per report dt. 16.03.2019 submitted by C.O. (Mtc.), on one holiday, you were deputed for attending the urgent complaints. However when you were contacted telephonically by Chief Court Officer, you did not attend the calls. After an hour, when you attended the call, you intimated that you were in Grain Market, Sector 26, Chandigarh, for inhaling fresh air. All these incidents mentioned above show your reluctance and unethical mannerism towards work. As such, you in order to save your skin you had told a lie and tried to mislead the authorities. There by you have failed to keep devotion towards your duties and acted in a manner unbecoming of a Government Employee.

4. You, Sh. Narinder Kumar, Peon, on 23.01.2019, were deputed to check and report the condition of Old Air Conditioners lying in the store. On 04.02.2019, when you were asked to submit your report, you replied that you did not check the Air Conditioners till that date. More time was given to you and after 21 days i.e. on 25.02.2019, you submitted your report. When certain clarifications were sought from you, you submitted your reply not only to the concerned authority but also to Asst. Registrar, Estt. I, Assistant Registrar (Mtc.) and Chief Court Officer and Court Officers through Co-ordination Branch of the Registry for the reasons best known to you, showing disregard to your superiors, which tantamount to be insubordination. Further, on 12.03.2019, you were deputed for servicing of Air Conditioners installed at the 2nd Floor of High Court Building. In the whole day you serviced only 02 Window Air Conditioners and also took services of 03 Frashes for that

purpose for full day in comparison to other AC (Mechanics) who did more work, which shows that you are a work- shirker and lacking of efficiency in discharging your official duty. As such, you have failed to keep devotion to your duties and acted in a manner unbecoming of a Government Employee.”

12 A regular departmental enquiry was thus ordered on the above said charges levelled against the petitioner. The Enquiry Officer returned the papers on 03.08.2023 along with a report that the behavior of the petitioner was not upto the mark. The petitioner also submitted an application on the same date for engaging an Advocate to assist him in the departmental proceedings and also for change of the Enquiry Officer. The request of the petitioner for engaging a counsel in the regular departmental enquiry had already been declined by the Chief Justice and the same was also considered by the Departmental Promotion Recruitment Committee, however, the request of the petitioner for change of the enquiry officer was accepted and the enquiry was handed over to the Joint Registrar (Litigation). Upon conclusion of the enquiry proceedings, the report furnished by the enquiry officer on 09.11.2022, in which the charges leveled against the petitioner were established, which was furnished to the petitioner along with a show cause notice and a representation as well as reply was received from him. The said matter was considered on 07.03.2023 and the Department Promotion Recruitment Committee recommended that final show cause notice for imposition of punishment of dismissal from service “which shall not be the disqualification for future employment under the Government” be served upon the petitioner.

13 The final show cause notice was thereafter served upon the petitioner to which he submitted his representation/reply. The matter was considered by the Departmental Promotion and Recruitment Committee and it recommended for removal of the petitioner from service which shall not be a disqualification for future employment. The said recommendation was put forth before the Hon'ble Chief Justice and he accepted the said recommendation made by the Department Promotion Recruitment Committee and has imposed the above said punishment of dismissal/removal from service which is not a disqualification for future employment with the Government.

14 The said order has now been challenged without raising a challenge to the enquiry report that was submitted by the Enquiry Officer. He further contends that the petitioner has nowhere alleged any motive or bias against the Enquiry Officer. The Enquiry Officer is not a party in the present proceedings. Further, the Enquiry report which is annexed with the present petition has also been perused. It is evident from the said Enquiry report that the department has examined as many as seven witnesses to support their case and establish the charge against the petitioner. The said witnesses were also cross-examined during the enquiry proceedings. The relevant part of the enquiry report is as under:-

“To substantiate the allegations levelled in the charge-sheet, the department has produced as many as seven witnesses namely Sudeep Singh, Junior Assistant, posted in Court Officer (Maintenance) Branch, Sh. Dalvinder Singh, Chief Court Officer, Sh. Deepak Arora, Superintendent Grade-1, Sh. Rajesh

Kumar, Superintendent Grade-1, Sh. Amrik Singh, Peon (Technical), Sh. Som Nath, Peon (Technical) (Now Restorer, Technical) and Sh. Baljinder Singh, Peon (Technical) of this Court. These witnesses are duly mentioned in the list of witnesses in the charge-sheet served upon the delinquent official.

While appearing as first witness on behalf of the Department to assist, EW-1 Mr. Sudeep Singh, Junior Assistant posted in Court Officer Branch has stated on oath that he was the Dealing Assistant of Technical Staff, who used to depute the officials for performing official duties at the residences of Hon'ble Judges, Court Roms and different branches etc. as and when directed by the Court Officer (Maintenance). He stated that on 23.01.2019, a complaint was received by him to check and report the conditions of old air-conditioners lying in the store, whereupon Sh. Neeraj, Clerk, deputed all four A.C. Mechanics including delinquent official- Narinder Kumar, Peon for doing the needful. The delinquent official was called upon to submit his report with regard to the work done by him. He (delinquent official) stated that he had not checked the air-conditioners, refrigerators and stabilizers. He was also given more time to get the things done but he did not do the required work. Again on 06.02.2019, he was called upon to come to High Court Building and submit the status report with regard to execution of work assigned to him. But the delinquent official came on 07.02.2019 and was called upon to explain as to why he did not discharge his duties. But he refused to give any explanation rather he misbehaved with him (Sh. Sudeep Singh, Dealing Assistant). Mr.Sudeep Singh further stated that he made entry to this effect in the note (Ex. P-1) dated 07.02.2019 in the presence of Sh. Dalvinder Singh, Chief Court Officer, who confirmed the said incident in writing. He also

proved Ex.P-2 entry of refusal to accept the explanation and Ex.P-3 the confirmation of the incident by Sh. Dalvinder Singh, Chief Court Officer. The said note was then forwarded to Sh. Satish Wig, the then Joint Registrar, which is Ex.P-4. He also proved on record Ex. P-5 and Ex. P-6 orders of learned Registrar (Administration) seeking explanation of the delinquent official. He also proved a note Ex.P-8 with regard to fight between the delinquent official and Amrik Singh, both Peon (Technical). Mr. Sudeep Singh also proved on record Ex. P-9 to Ex.P-11 official notings and reply of the delinquent official served upon him for dereliction of his duty from time to time.

During cross-examination of Sh. Sudeep Singh conducted by delinquent official, the delinquent official has denied the allegations with regard to the charges served upon him, Sh. Sudeep Singh has denied all the suggestions put to him that there was no complaint against delinquent official and he was making false statement. He showed his ignorance about the fight between the delinquent official and Amrik Singh, Peon (Technical) and as to whether FIR got lodged by the department or not. Mr. Sudeep Singh also stated that he did not know whether the delinquent official hit Amrik Singh with a tube rod. He also stated that he cannot say anything about the reasons of fight between the two employees. He also stated that he did not know whether the instructions were given by Sh. Dalvinder Singh, Chief Court Officer not to report the matter to the department

Sh. Dalvinder Singh, Chief Court officer appeared as EW-2 and stated that on the note put by Sh. Sudeep Singh (Ex.P-9), he deputed the delinquent official for filling water in the batteries of inverter at the residence of Hon'ble Mr. Justice

Kuldip Singh (since retired). He stated that the delinquent official refused to do the work and note in this regard was also put up by Sh. Sudeep Singh, which is Ex.P-10. On 08.01.2019, he brought the delinquent official to the office of learned Registrar General to convince the delinquent official to do his official duty sincerely. Sh. Dalvinder Singh further stated that on 23.01.2019 Sh. Ashish Solanki put up a note with regard to repair of old air-conditioners, mini refrigerators and stabilizers. Accordingly, three Mechanics including the delinquent official were deputed to check the same but the delinquent official did not come to attend his duty on 06.02.2019. On 07.02.2019, Sh. Sandeep Singh put a note that the delinquent official had not attended his duty and did not give reply to the explanation served upon him for not attending the duties. On 25.01.2019, the delinquent official was deputed to perform his duty but he refused to attend his duty. He stated that there are so many instances in the past that the delinquent official was asked to mend his ways. He also proved Ex.P-9 which is extract with regard to the earlier complaints being moved against the delinquent official. He also stated with regard to refusal of work by the delinquent official at the residence of Hon'ble Mr. Justice G.R. Majithia (since retired). He also stated that the performance of the delinquent official is very poor as on 12.03.2019 he carried out service of only two window air-conditioners in the whole day.

During cross-examination conducted by the delinquent official, Sh. Dalvinder Singh stated that he cannot say about the conditions that the electronic gadgets were lying in the store. He also stated that he cannot say as to why the delinquent official refused to do his duty on 08.01.2019. He denied the suggestion put to him that he was targeting the delinquent official only. He proved on record the report

submitted by three Mechanics with regard to checking of electronic gadgets as Ex.P-20. Sh. Dalvinder Singh further stated that he cannot say about performance of official duties done diligently by the delinquent official as well as his behaviour while he was posted in Mediation Centre. He also stated that he was not having knowledge that to what was the reason of altercation that took place on 07.07.2018 between the delinquent official and Amrik Singh. He also stated that he cannot say as to why no departmental action was taken against the delinquent official at that time. However, he stated that it is correct that Anirik Singh told him that the delinquent official had broken his mobile and lit him with a tube rod in the presence of Som Nath and Baljinder Singh. He also stated that Amrik Singh suffered four stitches on his arm. He also stated that the delinquent official did not submit any report about the conditions of air-conditioners, mini refrigerators and stabilizers on 04.02.2019 rather he submitted incomplete report on 05.02.2019 and complete report on 25.02.2019, which were proved as Ex.P-21 and Ex.P-22.

While appearing as EW-3, Sh. Deepak Arora, Superintendent Grade-1 has stated on oath that Sh. Dalvinder Singh, Chief Court Officer told him that the delinquent official refused to do the work assigned to him at the residence of Hon'ble Judges. He was asked to arrange a meeting with learned Registrar General but learned Registrar General was not available in his office.

During cross-examination Sh. Deepak Arora stated that there is no entry register in the office of Registrar General for the visitors. He also denied the suggestion that the delinquent official did not meet the Registrar General.

While appearing as EW-4 Sh. Rajesh Kumar, Superintendent Grade-1 has corroborated the statement of Sh. Sudeep Singh and proved Ex. P-9 and Ex.P-23.

During cross-examination he denied the suggestion that he was making false statement on the asking of Sh. Dalvinder Singh and Sh Sudeep Singh

Amrik Singh, Peon (Technical) appeared as EW-S and has stated on oath that on 07.07.2018 an altercation took place between him and the delinquent official in the presence of Som Nath and Baljinder Singh, in which he received injuries with a tube rod on the left arm and four stitches were applied.

During cross-examination, Amrik Singh stated that he did not lodge the FIR considering the fact that the delinquent official was his colleague. He also stated that when he was hit by the delinquent official with a tube rod he did not disclose the reason to the doctor concerned who was attending him at that time. He denied the suggestion put to him that the delinquent official did not hit him with a tube rod or that he misbehaved with the delinquent official.

While Som Nath, Peon Technical (Now Restorer, Technical) and Baljinder Singh, Peon (Technical) appeared as EW-6 and EW-7, respectively have corroborated the statement of Amrik Singh with regard to the incident of fight between two Peons namely the delinquent official and Amrik Singh. They confirmed that the delinquent official caused injuries to Amrik Singh with a tube rod.

Both these witnesses were cross-examined by the delinquent official and they denied the suggestions that they were making false statement or that they misbehaved with the

delinquent official. They also denied the suggestion that the delinquent official did not hit Amrik Singh with the tube rod.

After conclusion of evidence on behalf of the Department, the delinquent official was asked to lead his evidence in defence to prove his innocence. As many as three opportunities were granted to him on 01.11.2022, 02.11.2022 and 03.11.2022 but he did not turn up inspite of having been informed.

At the time, when he appeared before the undersigned, he duly noted the dates and assured to bring some evidence in his defence but every time he made false excuses that he is suffering from cervical pain and did not send any exemption application rather he sent three different prescription slips bearing dates 01.11.2022, 02.11.2022 and 03.11.2022 through WhatsApp, which are enclosed with this enquiry report. He only produced some prescription slip of the hospital through WhatsApp but did not produce any test report or the opinion of the doctor with regard to his inability to bring some evidence or any document in his defence evidence. It was not understandable as to why he could not bring the evidence in his defence, when the delinquent official present himself he could have brought some witness with him but he failed to avail the opportunity granted to him to produce some defence evidence. Even then initial two opportunities were given to lead defence evidence and last opportunity was given to the delinquent official to produce his defence evidence.

It is very surprised that the delinquent official attended the Establishment-1 Branch while making his presence in the register on 04.11.2022 as every suspended official is supposed to attend the office on every Friday. But despite message being

conveyed to him that the enquiry date is 03.11.2022 he did not appear before the undersigned even on Friday to give the reasonable explanation for not bringing the defence evidence. Thus, the conduct of the delinquent official shows that he has never been sincere and diligent while performing his duties and had been attending the duties only on his wishes and not as per the directions of his superiors. He has also not been supportive during the enquiry proceedings and after great persuasion he had been attending only on the dates as per his convenience. It is also pertinent to mention here that on many occasions he did not turn up in the enquiry proceedings. Therefore, the undersigned was satisfied that he was making lame excuses for not bringing defence evidence. Finding no other alternative. the undersigned vide his detailed order dated 03.11.2022 closed the defence evidence by order.

After carefully perusing the statements of witnesses ie. EW-1 to EW-7 as mentioned above, it stands established on record the delinquent official had not been performing his duty diligently to the satisfaction of his superiors. It stand proved on record from the statements of Sh. Sudeep Singh duly corroborated by Sh. Dalvinder Singh that the delinquent official had either refused to work or did not perform his work to the satisfaction of the Hon'ble Judges/Officers. There were many complaints against him that he had been asked to explain with regard to the dereliction of duties on many occasions.

The first charge with regard to dereliction of duty on 06.02.2019 and 07.02.2019 as mentioned in the Article of Charges stand fully substantiated and established in view of the statement of Sh. Sudeep Singh which stands corroborated by Sh. Dalvinder Singh, Chief Court Officer. Both these witnesses were cross-examined at length by the delinquent

official but nothing came out in their cross-examination which could bring something to disprove their version. These witnesses have duly proved the documents which have been exhibited and discussed above. These documents lends full support to the version given by the above said officials. Surprisingly, it also came on record during enquiry that the delinquent official refused to install one MIC for use of Hon'ble Chief Justice in the New Conference Hall as he flatly refused by saying that he did not know how to to ins install MIC. This fact has been duly supported and proved by EW-2 in his examination in chief. In view of above, the first charge stands proved against the delinquent official.

With regard to the second incident ie. on 07.07.2018 in which Amrik Singh sustained injuries, the same also stands established in view of the evidence of Amrik Singh, Peon (Technical) which stands corroborated by Som Nath and Baljinder Singh. All the witnesses have stated that incident took place in which the delinquent official caused injuries to Amrik Singh in the Court premises during duty hours. Four stitches were applied upon Amrik Singh. There is nothing on record to disbelieve the version of Amrik Singh duly supported and corroborated by two other witnesses. Therefore, this charge also stands proved against the delinquent official.

With regard to third charge i.e. the complaints made against the delinquent official for performing the service to the air-conditioners at the residence of the Hon'ble Judges, the same also stands proved and established on record in view of the statement of Sh. Sudeep Singh duly corroborated by Sh. Dalvinder Singh, Chief Court Officer. Despite lengthy cross-examination, nothing came out which could disprove their

version. Therefore, this charge also stands proved against the delinquent official.

So far as the fourth charge, the same also stands proved in view of the statement of EW-1 and EW-2 proved on record that the delinquent official was work shirker and had been trying to avoid the duties assigned to him from time to time. This charge also stands proved.

In view of the aforesaid discussion, the undersigned has come to the conclusion that the delinquent official has failed to keep devotion towards his duties and has acted in a manner unbecoming to a Government employee. These are so many instances in the past also that the delinquent official flatly refused to do the official work assigned to him and was asked on many occasions to mend his ways but in vain. He is thus held guilty on account of all the allegations levelled against him in the charge-sheet”

15 It is evident from a perusal of the above said that not only sufficient opportunity had been extended to the petitioner but he has also been allowed to cross-examine the witnesses that were produced by the employer. Three opportunities were also granted to the petitioner to lead evidence in defence and that he chose to abstain and not to participate in the said proceedings and tried to delay the same. The Enquiry Officer has specifically noticed that the petitioner refused to participate in the enquiry proceedings despite marking his presence in the Establishment Branch of the High Court and message being sent to him to participate in the enquiry

proceedings. No evidence was led by him to produce any evidence in defence or to substantiate his allegations.

16 Hence, it cannot be perceived that the Enquiry officer had conducted the enquiry proceedings in violation of the principles of natural justice and did not afford sufficient opportunity to the petitioner.

17 The principles of natural justice mandate a reasonable opportunity. The expression “reasonable” has not been defined in a straight-jacket formula and varies on a case to case basis. The Hon’ble Supreme Court of India expressed the view that the reasonable opportunity envisaged by Article 311 of the Constitution of India, in the matter of **Major U.R. Bhatt Vs. Union of India, reported as AIR 1962 SC 1344**, as under:-

- (i) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;
- (ii) An opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally
- (iii) An opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the

gravity or otherwise of the charges proved against the Government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant.

18 All these steps have undisputedly been followed in the present case. Hence, it cannot be said that reasonable opportunity of hearing was not extended to the petitioner. The statutory obligation is to afford a reasonable opportunity and it would not be vitiated if an employee has not availed the opportunities.

19 Further, power of judicial review is supervisory rather than corrective in its primary essence. Judicial review of the quantum of punishment is available with a very limited scope and in circumstances when the penalty imposed is disproportionate to the nature of misconduct that is shocking to the conscience of the Court. It was held by the Hon'ble Supreme Court in the matter of **S.R. Tewari Vs. Union of India, reported as (2013) 6 SCC 602** that only in very rare cases the Courts, in order to shorten litigation, may substitute its own view for punishment awarded by a Competent Authority by recording cogent reasons in support thereof. A mere statement that punishment is disproportionate would not suffice.

20 It is well settled that punishment is primarily a function of management and the Courts rarely interfere with the quantum of punishment. A finding recorded by the authority should be perverse before it calls for an interference by the High Court in exercise of power of judicial review as per **Union of India and others vs. Manab Kumar Guha reported**

as (2011) 11 SCC 535. It was further held that a High Court while exercising powers of judicial review in respect of order of disciplinary authority does not act as a Court of Appeal and re-assess the evidence led in the domestic enquiry.

21 Acts of consistent disregard of Authority are blatant acts of insubordination which render an employee liable to dismissal from service as well. Hence, an act of insubordination is amongst acts attracting harsh punishment.

22 Now adverting to the argument of the petitioner that he has already been punished by transferring him from Peon (Technical) to Peon (Pool), a specific query was posed to the counsel for the petitioner as to whether the transfer/posting of an employee from the Peon (Technical) to Peon (Pool) is an order of punishment pursuant to any proceedings initiated or not. Counsel for the petitioner fairly concedes that there is no such provision in law under which such an order of posting/transfer could be construed as an order of punishment pursuant to disciplinary proceedings initiated by the authorities. The order not being punitive, imposition of punishment as per law cannot be held as double jeopardy.

23 This now leaves with an issue as to whether the punishment imposed could be considered to be harsh since there is no other instance of misconduct.

24 Even though a specific plea is raised by the counsel for the petitioner that the conduct of the petitioner has been above board during the

seven years of service that has been rendered by the petitioner before this Court and there is no previous instance of misbehavior, however, the number of offences or terms of disciplinary proceedings are not the sole benchmark on which the punishment is to be decided. The punishment to be imposed has to be seen on the basis of the gravity of the mis-conduct and the nature of the charges leveled and established.

25 It is evident that the charges against the petitioner were of gross insubordination and misconduct. The petitioner refused not only to respond to the calls of the Chief Court Officer (Maintenance) and attend to the work directed to him but he also refused to come on duty on 25/26.01.2019 for making appropriate arrangements on the occasion of Republic day. Even though, the petitioner claims that he was appointed as Peon (Technical) on the basis of his Diploma Certificate, he refused to install the mic required for the use of the Chief Justice in the Conference Hall on a false pretext that he does not know how the same is to be installed.

26 Additionally, it is also established that the petitioner had hit his colleague Amrik Singh, Peon (Technical) A.C./Mechanical in the presence of other co-workers and that he had refused to carry out the work of maintenance of Air Conditioning. When the Court Officers/Superiors asked for the services of the petitioner, he failed to respond to the same and was misleading them on one pretext or the other and instead of reporting at the location and for redressing the complaint for which he was directed, his location was traced in Section 26 and Tribune Roundabout Sector 29, Chandigarh. He is reportedly in the habit of insubordination by not

responding to the calls on being contacted by the Chief Court Officer and to respond at his leisure. The articles of charges as leveled and established clearly show that the petitioner has failed to display and maintain the discipline and execute the job assigned to him. The said acts of recurring gross insubordination cannot be construed as minor. In any organization, disregard of an authority is a case of grave misconduct and cannot be permitted to go unnoticed and unchecked.

27 The competent authority has already taken a lenient view and while imposing the punishment of removal from service, the same has not been held as a disqualification for future employment. The satisfaction of an employer about suitability of an employee cannot be substituted by Court and if the statutory procedure and principles of natural justice have been followed, punishment should be interfered with in a rare case. No such circumstances have been shown to be existent in the present case.

28 I find that there is no ground for interference in the order passed and no illegality or procedural impropriety has been brought to the notice of this Court by the counsel appearing on behalf of the petitioner.

29 The present writ petition is accordingly dismissed.

February 27, 2024.
raj arora

(VINOD S. BHARDWAJ
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No