



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

CWP No. 1221 of 1999 (O&M)

Date of Decision: 10.03.2025

Capt. S.P.Singh (since deceased) through his Lrs.

....Petitioner

VS.

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. R.K.Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate
for the petitioner

Mr. Raman Sharma, Addl. A.G., Haryana

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Article 226 of the Constitution of India is seeking setting aside of order dated 02.06.1997 (Annexure P-5) whereby he was dismissed from service and order dated 14.01.1997 (Annexure P-7) whereby his appeal was dismissed.

2. The petitioner was appointed as Assistant Secretary, Zila Sainik Board, Rewari on 13.01.1983. He had retired as Captain from Indian Army. The respondent issued him a charge sheet dated 06.12.1993. An Enquiry Officer came to be appointed who submitted his report dated 04.12.1995. In his report, Enquiry Officer found him guilty of three charges though one charge could not be proved. The Disciplinary Authority issued



him show cause notice. The petitioner filed reply to said show cause notice. The Disciplinary Authority vide impugned order dated 02.06.1997 awarded him punishment of termination from service. The petitioner filed a representation before Government which was rejected as not maintainable.

3. Mr. R.K.Malik, Senior Counsel submits that as per Notification dated 05.12.1975, the punishing authority was Government whereas impugned order was passed by Chief Secretary to Government of Haryana. Prior to December'1975, the punishing authority was Chief Secretary to Government and appeal used to lie before Government. The petitioner filed detailed reply to show cause notice, however, Disciplinary Authority did not advert to his submissions and mechanically passed order of dismissal from service. The charges were so vague that an employee could not be dismissed even if assumed to be proved.

4. Mr. Raman Sharma, Addl. A.G., Haryana submits that impugned order was passed by Chief Secretary who was the highest authority in the State Government. As per Notification of 1975, the order could be passed by Government. The right of appeal was curtailed. The petitioner was granted opportunity during enquiry, however, he did not come forward, thus, *ex parte* enquiry was conducted. He filed reply to show cause notice issued by Disciplinary Authority. The Disciplinary Authority considering report of Enquiry Officer passed the impugned order. The petitioner has passed away. He was Ex-Army Officer and was appointed in Zila Sainik Board. He was expected to maintain high standard of discipline and integrity. In those compelled circumstances, the impugned order of dismissal from service was passed.



5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. Concededly, the petitioner has passed away and he was supposed to retire on 31.05.2004. He was claiming that impugned order was passed by an authority which was not competent. The act of respondent amounts to violation of Article 311 of Constitution of India. He is relying upon judgment of Supreme Court in **Mysore State Road Transport Co. vs. Mirja Khasim Ali Beg and another, (1977) 2 SCC 457**. The impugned order was passed by Chief Secretary who is the highest authority in the State Government. The Disciplinary Authority was Government. There is difference between Legislature and Government. Government means Executive and impugned order was passed by the senior most officer of the Executive i.e. Chief Secretary to Government of Haryana. As impugned order was passed by the Chief Secretary, thus, it is difficult to conclude that order was passed by an incompetent authority. Once expression 'Government' is used, the power can be delegated to any authority even below the rank of Chief Secretary whereas order was passed by Chief Secretary, thus, there seems no infirmity in the impugned order.

7. With respect to other submissions of the petitioner, this Court is of the considered opinion that it is settled proposition of law that High Court cannot interfere with order of Disciplinary Authority unless and until the authority was incompetent or has not followed the procedure prescribed by law.

8. Scope of interference while exercising jurisdiction under Articles 226/227 of the Constitution of India in disciplinary proceedings is



very limited. The Court has no power to look into quantum of sentence/punishment unless and until Court finds that sentence awarded is disproportionate to alleged offence. It is further settled proposition of law that High Court while exercising its jurisdiction under Article 226 of Constitution of India can look into the procedure followed by authorities. In case, it is found that enquiry officer or disciplinary authority has not considered any evidence on record or misread the evidence or procedure as prescribed by law has not been followed, the Court can interfere. A two-judge Bench of Hon'ble Supreme Court in **Union of India and others vs. Subrata Nath, (2022) SCC OnLine 1617** while advertizing 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 inquiry, 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, (2015) 2 SCC 610**. 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 re-appreciation 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 re-consider 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 therefore.”

9. The Supreme Court has time and again reminded that High Court cannot examine factual position and disturb findings recorded by departmental authorities. The Court has further held that High Court cannot re-quantify quantum of punishment, however, if Court finds that punishment awarded is disproportionate to alleged offence, the Court may ask the authorities to re-consider quantum of punishment.

10. From the perusal of record, it is evident that petitioner was removed from service after following procedure prescribed by law. He was issued charge sheet followed by show cause notice. He filed representation which was rejected.

13. In the wake of above discussion and findings, the instant petition deserves to be dismissed and accordingly hereby dismissed.

14. Pending Misc. application(s), if any, shall stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

10.03.2025
paramjit

Whether speaking/reasoned:	Yes	
Whether reportable:	Yes	