2025:PHHC:031627-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-1763-2023 (O&M)
Date of Decision: February 28, 2025

Yuvraj Kumar .....Appellant

Versus

State of Punjab and others ..... Respondents

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Karanvir Singh Khehar, Advocate for the appellant.

Mr. Shekhar Verma, Addl. AG, Punjab.

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LISA GILL, J.

1. Prayer in this appeal is for setting aside order dated 03.10.2023, passed by learned Single Bench, whereby writ petition filed by appellant (writ petitioner) has been dismissed.

2. Appellant/writ petitioner filed CWP-17391-2023 for setting aside charge sheet dated 10.03.2021, order dated 15.11.2021 whereby punishment of stoppage of one increment with future effect was imposed upon him besides setting aside order dated 18.08.2022 passed by Appellate Authority, dismissing his appeal challenging order dated 15.11.2021. It was submitted that petitioner, who was appointed as Clerk in the office of Excise and Taxation Department, Punjab was promoted to the post of Inspector on 17.05.2010. However, charge sheet dated 10.03.2021 was issued to him under Rule 8 of

Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short – 'Punishment and Appeal Rules') with allegations of commission of negligence, irregularity and delinquency. As per list of charges, appellant was alleged to have committed theft of liquor with stolen liquor recovered from his personal vehicle and that instead of restraining wrongful activities he himself indulged in wrong doing.

3. Reply thereto was filed by appellant. Inquiry Officer i.e. Deputy Commissioner (Excise), Jalandhar zone, Jalandhar was appointed to look into the matter He conducted inquiry into the matter and as per report dated 08.06.2021, appellant was exonerated of the charges. However, in a peculiar fashion, the same inquiry Officer initiated a fresh inquiry at his own level after completion of inquiry proceedings on the premise that some fresh material in the form of photos and video recordings had come to his notice at the instance of Excise Officer. Inquiry report was again submitted stating that it is apparent that appellant, who was present on duty on 10.12.2020 did not check the vehicle in which liquor boxes were loaded by Joban Singh, Excise Peon. It was, thus, concluded that charges levelled against appellant are proved. Copy of report was served upon petitioner. Competent authority vide order dated 15.11.2021 awarded punishment of stoppage of one annual increment with future effect under Rule 15(v) of Punishment and Appeal Rules. Appeal filed by appellant before Secretary to Government, Excise and Taxation Department, Punjab was dismissed on 18.08.2022. Aggrieved therefrom, writ petition was filed by present appellant, which was dismissed by learned Single Bench while holding that ample proof has come on record that appellant was negligent towards his duties as there had been continuous theft of liquor while

he was posted at the distillery in question as Excise and Taxation Inspector. Liability of appellant for negligence and carelessness was found to be proved. Aggrieved therefrom, present appeal has been filed.

4. Learned counsel for appellant vehemently argued that procedure adopted by authorities in conducting proceedings against appellant is dehors the provisions of law, hence, the entire proceedings are vitiated and should be set aside. It was contended that holding of denovo inquiry by Inquiry Officer after having once exonerated the appellant of charges, is an illegal exercise conducted by him. Entire proceedings should be set aside on this ground itself. Appellant has not been held of guilty of commission of theft of liquor as such, therefore, entire case of the Department falls like house of cards. Learned Single Bench, it is submitted, has incorrectly ignored judgment of the High Court in **K.R. Deb vs. Collector of Central Excise, Shillong 1971 (2) SCC 102** and **Vijay Shankar Pandey vs. Union of India and another (2014) 10 SCC 589**.

5. Per contra learned counsel for State has refuted arguments as raised on behalf of appellant. It is submitted that once fresh facts were brought on record by Excise Officer to the notice of Inquiry Officer i.e. Deputy Commissioner, Excise Jalandhar, he was well within his right to have looked into the matter. Video recordings reflecting loading of liquor by appellant with help of Excise Peon in a private vehicle came to fore, upon which inquiry officer corrected his report by holding that charges levelled against appellant are proved and he was held guilty of negligence and carelessness while performing his duty. No procedural irregularity is present in the inquiry proceedings as alleged by the appellant, who was given due opportunity of

hearing at every stage to present his case. Dismissal of appeal was, thus, sought.

6. We heard learned counsel for parties and have carefully scrutinized the file.

7. Factual matrix as narrated above is not in dispute. Primary argument raised by learned counsel for appellant was that inquiry proceedings were not in accordance with applicable provisions inasmuch as after having submitted the inquiry report it is not open to the Inquiry Officer to conduct a denovo inquiry. It is to be noted at this stage that Inquiry Officer i.e. Deputy Commissioner (Excise), Jalandhar after forwarding report dated 08.06.2021, submitted communication dated 22.06.2021 (Annexure P4) to the Taxation Commissioner, Punjab stating that Excise Officer (Smt. Sukhdeep Kaur Bajwa), Incharge M/s Pioneer Limited Company, Pathankot produced some important documents/evidence regarding inquiry on 22.06.2021 which shall have direct impact on inquiry in question. It was, thus, stated that earlier report be ignored and fresh report being sent on the basis of facts brought to his knowledge/notice subsequently, be taken in account. It is apparent from record that Inquiry Officer at the first instance indeed submitted report vide letter dated 08.06.2021 finding no merit in charges against appellant. Certain videos, photographs were produced by Smt. Sukhdeep Kaur Bajwa, Incharge M/s Pioneer Limited Company, Pathankot on 22.06.2021. Notice dated 23.06.2021 was duly issued to the appellant. Objection raised by him in respect to inquiry report already being sent was correctly dealt with while holding that said report had not been accepted by competent authority. Inquiry Officer intimated Taxation Commissioner, Patiala on 05.07.2021 pointing out that certain

evidence was produced before him by Smt. Sukhdeep Kaur Bajwa, Excise Officer, Incharge M/s Pioneer Limited Company, Pathankot in connection with inquiry having direct bearing thereon. Said evidence was required to be considered but could not be made a part of proceedings earlier as it was not in his knowledge. Consequently, the amended inquiry report was conveyed whereby charges against appellant were held to be proved. In our considered opinion, present is clearly not a case of re-inquiry or denovo inquiry but a case where inquiry Officer took in account subsequent evidence in form of photographs and video recordings having a definite bearing on the matter. It is clearly mentioned in impugned order dated 03.10.2023 that earlier inquiry report was not sent to the petitioner separately but it is the second inquiry report, which is the final conclusion of Inquiry Officer. There is indeed no material on record to refute the same.

8. Learned Single Bench has correctly distinguished the judgments of Hon'ble the Supreme Court in **K.R. Deb**'s case (supra) and **Vijay Shakar Pandey**'s case (supra) while noting that even as per the judgment of Hon'ble the Supreme Court in **K.R. Deb**'s case (supra) the same Inquiry Officer can always be asked to record further evidence and that in the present case inquiry Officer suo motu corrected the earlier inquiry report without there being any direction from the disciplinary authority to conduct any fresh or denovo inquiry.

9. Another argument raised by learned counsel for appellant was that once disciplinary authority concluded that there is no solid evidence regarding involvement of appellant in theft of liquor, there was no question of imposing punishment upon him. This argument is also devoid of any merit. It

is pertinent to note at this stage that Inquiry Officer-cum-Deputy Commissioner (Excise), Jalandhar zone, concluded that:-

> “10. From the perusal of statement got recorded during the course of enquiry and concerned record, it is concluded that as per the attendance register on 10.12.2020 and 30.12.2020 Shri Yuvraj Kumar, Excise and Taxation Inspector and Shri Joban Singh, Excise Peon were present on duty. On 22.06.2021, the photos and video recordings which have been presented by Smt. Sukhdeep Kaur Bajwa, Excise Officer, it is clearly visible in it that on 10.12.2020 at 12.50 hrs Shri Joban Singh, Excise Peon alongwith some persons is loading liquor boxes in a personal vehicle and without getting any checking himself is taking out the Scorpio Car from distillery. Whereas, Shri Yuvraj Kumar, Excise and Taxation Inspector present on duty has neither checked this vehicle or any other vehicles nor has stopped this vehicle.”

On consideration of entire facts, it has been held by the disciplinary authority as upheld by Appellate Authority, that though there is no solid evidence regarding involvement of the appellant in theft of liquor, however, it was his duty as Excise and Taxation Inspector not to allow the occurrence of any such kind of illegal act in the distillery. His responsibility to prevent such illegality is not in dispute and any shortcoming therein proves negligence and carelessness of the Officer. Therefore, he was held guilty of negligence, delinquency and irregularity in his duty and not of theft of liquor by himself. Learned counsel for appellant was unable to point out any material on record to dislodge such a conclusion.

10. Learned counsel was unable to point out any irregularity, illegality in impugned order dated 03.10.2023, passed by learned Single Bench, which is accordingly upheld.

11. No other argument has been addressed.

12. Keeping in view the facts and circumstances as above, this appeal is dismissed being devoid of any merit.

(LISA GILL)
JUDGE

(ALOK JAIN)
JUDGE

February 28, 2025
Rts

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