

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-5150-2020 (O&M)

Decided on 23.03.2026

Nem Kumar

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CWP-18727-2021 (O&M)

Balraj Singh

... Petitioner

VS.

State of Haryana & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Sourabh Bhoria, Advocate and
Mr. Ishaan Singh, Advocate for the petitioner(s)

Mr. Rahul Dev Singh, Addl. AG Haryana

Mr. Arun Singal, Advocate for respondent No.2

Mr. Rakhi Sharma, Advocate
for respondent No.3&4 (CWP-18727-2021)
for respondent No.2 to 4 (CWP-5150-2020)

Sandeep Moudgil, J.

(1). By this order, I shall dispose of CWP-5150-2020 & CWP-18727-2021 as common issues are involved. For facts, CWP-5150-2020 is treated as the lead case.

Prayer

(2). The jurisdiction of this Court has been invoked under Articles 226/227 of the Constitution of India for the issuance of a writ in the nature of *certiorari* quashing the impugned charge sheet dated 08.11.2011 (Annexure P2), show cause notice dated 19.02.2013 (Annexure P4) and order dated

02.04.2013 (Annexure P6) whereby services of the petitioner have been terminated. A direction has been sought to the respondents to reinstate the petitioner in service with all consequential benefits w.e.f. 02.04.2013.

Facts

(3). The petitioner was appointed as Accounts Clerk (Child Welfare Officer cadre) with the Haryana State Council for Child Welfare, District Branch, Faridabad vide appointment/absorption letter dated 02.08.1998, wherein the Council itself figures as appointing authority in terms of Clause 11 of the Standing Orders which otherwise vests appointing power in the Honorary General Secretary.

(4). On 08.11.2011, respondent No.3 issued a memorandum/charge sheet under Rule 7 of the Haryana Civil Services (Punishment & Appeal) Rules, 1987 (in short, 'the 1987 Rules') alleging embezzlement/misappropriation of an amount of Rs. 37,60,891/-, to which the petitioner submitted a detailed written reply dated 25.11.2011 denying the charges. An Inquiry Officer was thereafter appointed, vide which his report held the charges proved and vide memorandum dated 19.02.2013 along with a show cause notice recommended for petitioner's removal from service. Therefore, without adverting to the objections raised by the petitioner, respondent No.4 passed order dated 02.04.2013 removing the petitioner from service with effect from the same date, treating the findings of the Inquiry Officer as conclusive.

(5). The petitioner and his co-employees, Shri Kamlesh Shastri and Shri Chander Mohan Bhatnagar (both District Child Welfare Officers), were also prosecuted in FIR No.184 dated 17.06.2011 under sections 409, 420, 34

IPC on the same subject-matter, however, vide judgment dated 10.01.2017, the trial court acquitted all accused of the charges and the said judgment was affirmed by Addl. Sessions Judge, Faridabad vide its judgment dated 01.08.2019. After his acquittal, the petitioner approached respondent No.4 for reinstatement vide representation/request dated 23.01.2017 and 14.08.2019, but his claim was rejected by the impugned order dated 01.07.2020, even though this Court had, in the meantime, allowed the writ petitions of his co-employees in CWP No.14808 of 2016 (Kamlesh Shastri) and CWP No.24544 of 2013 (Chander Mohan Bhatnagar), as well as LPA No.1682 of 2016, setting aside the identical punishment orders passed against them and granting consequential benefits.

(6). Hence this writ petition.

Petitioner's Contentions

(7). Learned counsel for the petitioner contends that the entire disciplinary action, from issuance of charge sheet to passing of the dismissal order, stands vitiated for want of competence of the disciplinary authority, inasmuch as the appointing authority for the cadre in question is the Council/Honorary General Secretary under Clause 11 of the Standing Orders and not the Deputy Commissioner-cum-President, DCCW, Faridabad, who has passed the impugned order dated 02.04.2013. It is urged that the charge sheet was issued mechanically, without any preliminary fact-finding or determination of actual loss and without adverting to the audit reports demonstrating that the accounts were in order and therefore, the foundational facts for initiating proceedings under Rule 7 of the 1987 Rules were missing.

(8). It is further submitted that the enquiry was conducted in flagrant violation of principles of natural justice, as recognised by this Court in **Jitender Singh v. State of Haryana (2006(8) SLR 391**, since material documents were not properly confronted, findings are non-speaking and there was no independent evaluation of evidence by the disciplinary authority while issuing the show cause and final order.

(9). It is further urged that the criminal case in FIR No.184 of 2011 arises out of the same transaction and allegations of embezzlement wherein the petitioner's acquittal vide trial court judgment dated 10.01.2017 (Annexure P11) has been affirmed by the appellate Court vide judgment dated 01.08.2019 (Annexure P12) and the same has attained finality which fact completely demolishes the substratum of the departmental charges, particularly when both proceedings are founded on the same evidence and factual matrix.

(10). Learned counsel vehemently contended and invoked the doctrine of parity, pointing out that his co-employees, Kamlesh Shastri and Chander Mohan Bhatnagar, who were charge-sheeted and terminated on the very same allegations and under the same set of facts, have already been granted relief by this Court in CWP No.14808 of 2016, CWP No.24544 of 2013 and LPA No.1682 of 2016, and there is no distinguishing feature that can justify a different treatment to the petitioner.

Contentions on behalf of Respondents no.2 to 4

(11). The respondents No.2 to 4, in their written statement, raise a preliminary objection that the writ petition deserves dismissal on account of gross delay and laches, contending that the dismissal order was passed on 02.04.2013, but the petitioner did not avail the statutory appeal provided under

the Haryana State Council for Child Welfare (Employees Service) Rules, 2017 and did not approach this Court for almost seven years, without furnishing any satisfactory explanation.

(12). Learned counsel for respondents No.2 to 4 submits that the petitioner, being an Accountant, was personally and directly responsible for the maintenance of accounts and for safeguarding funds to the tune of Rs.37,60,891/- meant for the welfare of children, and that he embezzled this amount without any approval, hence the case is serious and stands on a different footing from that of his colleagues who were District Child Welfare Officers.

(13). They assert that the departmental inquiries in the cases of the co-employees were conducted by the Honorary General Secretary, Haryana State Council for Child Welfare, whereas in the petitioner's case, the inquiry was conducted by the Sub-Divisional Officer (C), Faridabad, with the Deputy Commissioner-cum-President, DCCW, acting as disciplinary authority, and therefore the petitioner cannot claim parity with them. It is pleaded that the petitioner was afforded full opportunity in the enquiry, including the right to cross-examine witnesses although, he never objected to the conduct of enquiry or competence of the authority at any stage, and that the Inquiry Officer's report, the petitioner's reply to the show cause, and all relevant material were duly considered before passing a speaking order of dismissal on 02.04.2013. It is contended that acquittal in a criminal case does not *ipso facto* obliterate or vitiate the dismissal order founded on departmental proceedings, since the standard of proof and the object of the two proceedings differ, and that the petitioner's reliance on the judgments in favour of his co-employees is

misconceived because his role and responsibility as Accountant were qualitatively different.

(14). Heard learned counsel for the parties and gone through the record.

Analysis and conclusion

(15). Having considered the rival submissions, this Court finds that the impugned disciplinary action cannot be sustained, essentially for the reason that the record indicates a serious doubt about the competence of the Deputy Commissioner-cum-President, DCCW, to act as disciplinary authority for an employee whose appointing authority is the Council/Honorary General Secretary, and an order passed by an authority lacking such power is *void ab initio*.

(16). Secondly, a perusal of replies filed by the petitioner (Annexures P-3 & P-5) in sync with the impugned order dated 02.04.2013 (Annexure P-6), it is evident that, although the petitioner raised specific pleas regarding absence of any preliminary fact-finding, non-quantification of loss, and the audit reports exonerating him, the disciplinary authority has not returned any reasoned finding on these aspects and has, instead, merely adopted the conclusions of the Inquiry Officer as conclusive, without independent evaluation of the evidence or the petitioner's explanation. The contemporaneous audit reports (Annexure P-7), which directly bear on the allegation of embezzlement, have not even been adverted to in the impugned order dated 02.04.2013, thereby indicating that relevant material was excluded from consideration while passing an order imposing the extreme penalty of dismissal.

(17). The disciplinary authority thus failed to discharge its quasi-judicial obligation to independently evaluate the evidence and the

petitioner's explanation and has, in effect, treated the inquiry report as conclusive, in clear derogation of the requirement that the delinquent's reply be meaningfully considered and that relevant exculpatory material not be ignored. Such a mechanical adoption of the inquiry report, coupled with the total omission to deal with the contemporaneous audit findings, squarely offends the principles of natural justice as explained by the Supreme Court and by this Court in **Jitender Singh's** case and suffices by itself to render the impugned order unsustainable in law.

(18). Thirdly, it is not in dispute that the charge sheet dated 08.11.2011 (Annexure P-2), the inquiry report/show cause dated 19.02.2013 (Annexure P-4) and the dismissal order dated 02.04.2013 (Annexure P-6) are all founded on the same alleged embezzlement of Rs. 37,60,891/- during the petitioner's tenure at Faridabad, which formed the subject-matter of FIR No.184 dated 17.06.2011. The petitioner, along with his co-employees, Shri Kamlesh Shastri and Shri Chander Mohan Bhatnagar, has been acquitted of these very charges by the Trial Court, and such acquittal has been affirmed by the Appellate Court, thereby negating the very factual foundation on which the departmental action rests.

(19). In this backdrop, it would be apposite to notice the law laid down by the Supreme Court in **G.M. Tank v. State of Gujarat, (2006) 5 SCC 446**, wherein the Court, after surveying the earlier precedents including **Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999) 3 SCC 679**, held that though criminal and departmental proceedings are generally distinct, a different consequence follows where both are founded on the same incident and are supported by the same set of facts, evidence and witnesses. The Supreme Court

held that to sustain the dismissal order on the very same material would be 'unjust, unfair and rather oppressive' and accordingly set aside the departmental punishment as well. The ratio clearly applies to a case, such as the present one, where the FIR, the charge-sheet and the departmental proceedings rest on the same factual substratum where the criminal court has recorded an acquittal on that very material, and there is no additional or independent evidence in the departmental proceedings to distinguish the findings. The relevant extracts of the judgment read as under:-

"23. In the case of Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr. (supra), the question before this Court was as to whether the departmental proceedings and the proceedings in a criminal case launched on the basis of the same set of facts can be continued simultaneously. In Paragraph 34, this Court held as under :

"34. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely "the raid conducted at the appellant's residence and recovery of incriminating articles therefrom". The findings recorded by the enquiry officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by police officers and panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the enquiry officer and the enquiry officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion

that no search was conducted nor was any recovery made from the residence of the appellant. The whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the "raid and recovery" at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings to stand."

xxxx xxxx xxxx

32. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case (supra) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed."

(20). In view of the foregoing discussion, this Court is satisfied that the impugned disciplinary action against the petitioner cannot be sustained. The very competence of the authority which has passed the dismissal order is doubtful in law. Moreover, the enquiry and the final order stand vitiated by non-consideration of the petitioner's specific replies and the contemporaneous audit reports, in clear breach of the principles of natural justice and, in any event, the factual foundation of the charges has already been negated by concurrent criminal courts on the same material, while this Court has extended

full relief to identically placed co-employees on the same transaction, attracting the exception carved out in **G.M. Tank** case (supra).

(21). Accordingly, the writ petition is allowed the memorandum/charge-sheet dated 08.11.2011 (Annexure P-2), the enquiry report and show-cause dated 19.02.2013 (Annexure P-4) and the dismissal order dated 02.04.2013 (Annexure P-6) are hereby quashed. The petitioner shall be reinstated in service, and shall be entitled to his entire salary arrears and such consequential benefits as are admissible in law, to be worked out in the light of the relief already extended to Shri Kamlesh Shastri and Shri Chander Mohan Bhatnagar. The petitioner shall be entitled to interest @ 6% p.a. on the arrears of service/retiral dues which shall be disbursed to the petitioner by the respondents who are directed to do so within a period of three months from the date of receipt of a certified copy of this order.

(22). Pending applications stand disposed of accordingly.

23.03.2026

V.Vishal

(Sandeep Moudgil)
Judge

1. *Whether speaking/reasoned?* :
2. *Whether reportable?* :

Yes/No
Yes/No