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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2440-2008
DECIDED ON: 25.02.2026

ISHWAR SINGH DAHIYA

....PETITIONER(S)

VERSUS

STATE OF HARYANA AND ANR

....RESPONDENT(S)

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Abhishek Sharma, Advocate and
Mr. Paramvir Singh, Advocate for the petitioner(s).

Ms. Mayuri Lakhanpal Kalia, DAG, Haryana.

SANDEEP MOUDGIL, J (ORAL)

Prayer

1. The present Civil Writ Petition under Articles 226/227 of the Constitution of India has been filed seeking issuance of a writ of certiorari for quashing the Show Cause Notice/Memorandum of Charges dated 24.09.2004, the Inquiry Report dated 13.06.2007, and the impugned order dated 14.02.2008 passed by the State Government imposing the penalty of compulsory retirement upon the petitioner. The petitioner further seeks issuance of a writ in the nature of mandamus/prohibition for setting aside the charges levelled against him and for permitting him to retire in the normal course on 29.02.2008, along with all consequential benefits.

Brief Facts

2. The petitioner was appointed to the Haryana Civil Services (Executive Branch) on 29.11.1999 under the Punjab Civil Services (Executive Branch) Rules, 1930 and served on various assignments including Joint Director, City Magistrate and Sub-Divisional Officer (Civil). In November 2001, he appeared in the Departmental Examination for Assistant Commissioners/Extra Assistant Commissioners. Nearly three years thereafter, a charge-sheet dated 24.09.2004 was issued alleging that in the Revenue Law Paper-II held on 29.11.2001, the petitioner had indulged in copying, as his answers were found to tally verbatim with statutory material. The petitioner denied the allegation, asserting that no complaint was made by any invigilator on the date of examination, no incriminating material was recovered and, significantly, he had failed in the said paper.

3. A regular departmental inquiry was conducted under the Haryana Civil Services (Punishment & Appeal) Rules, 1987. The Inquiry Officer returned a finding of guilt primarily on the basis of similarity of answers with the text of the book. On the basis of the inquiry report, a show cause notice proposing compulsory retirement was issued. The matter was referred for consultation to the Haryana Public Service Commission under Article 320(3)(c) of the Constitution of India, which expressed reservations regarding the sufficiency of evidence and the proposed punishment. Notwithstanding the observations of the Commission, the competent authority passed the impugned order dated 14.02.2008 (Annexure P-12) compulsorily retiring the petitioner from service shortly before his normal superannuation.

4. Aggrieved thereby, the petitioner has approached this Court.

Contentions**On behalf of petitioner**

5. Learned counsel for the petitioner contends that the entire disciplinary action is vitiated as the finding of guilt is based on conjecture and not on legally admissible evidence. It is argued that no invigilator reported any incident of copying on the date of examination, no complaint was lodged contemporaneously, and no incriminating material was recovered from the petitioner. The charge, it is submitted, rests solely on a post facto comparison of answer sheets with statutory text, which by itself cannot establish use of unfair means.

6. Counsel emphasizes that the petitioner failed in the concerned paper, thereby deriving no advantage from the alleged act, which demolishes the very substratum of the accusation. It is further urged that the Inquiry Officer proceeded on presumption rather than proof and that suspicion, however strong, cannot substitute evidence even in departmental proceedings.

7. Attention is also drawn to the observations made by the Haryana Public Service Commission, which found absence of cogent material and questioned the propriety of imposing compulsory retirement at the verge of superannuation. The impugned order, it is argued, reflects non-application of mind, is disproportionate, and offends principles of natural justice.

On behalf of respondent-State

8. Per contra, learned State counsel submits that the scope of judicial review in disciplinary matters is limited and this Court ought not to re-appreciate evidence as an appellate authority. It is argued that the Inquiry Officer, after affording full opportunity to the petitioner, returned a finding of guilt based on the striking verbatim similarity between the answers written by the petitioner and the

contents of the prescribed books and manuals, which, according to the respondents, could not have been reproduced without resorting to unfair means.

9. The State contends that departmental proceedings are governed by the standard of preponderance of probabilities and not proof beyond reasonable doubt. It is further submitted that consultation with the Public Service Commission is advisory in nature and not binding upon the Government, and the competent authority, upon independent consideration, was justified in disagreeing with the Commission's observations. It is argued that the punishment of compulsory retirement was imposed after due procedure and cannot be termed arbitrary or illegal.

Analysis

10. The principal issue that arises for determination is whether the disciplinary finding holding the petitioner guilty of indulging in copying in the departmental examination of Revenue Law Paper-II which was to be answered without the help of books, is supported by legally sustainable evidence so as to justify the punishment of compulsory retirement imposed vide order dated 14.02.2008.

Scope of Judicial Review

11. The contours of judicial review in disciplinary matters are well settled. The court under writ jurisdiction does not don the robes of an appellate forum, yet it also cannot remain a silent spectator where the conclusion is founded upon conjecture rather than proof. The Supreme Court in "**B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749**", held that,

"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily

correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence.

12. Similarly, in “**Union of India v. P. Gunasekaran, (2015) 2 SCC 610**”, the Supreme Court held that the High Court does not sit as an appellate authority over the decision of the Disciplinary Authority. Judicial review is confined to examining,

1. whether the enquiry was conducted in accordance with the principles of natural justice,
2. whether findings are based on some evidence,
3. whether the process was vitiated by *malafide* or arbitrariness, or
4. whether the punishment imposed is so disproportionate as to shock the conscience of the Court.

Relevant extract of the same is as under:

13. 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, re-appreciating even the evidence before the enquiry officer. The finding on Charge No. 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 Article 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.*

Under Article 226/227 of the Constitution of India, the High Court shall not:

- (i). re-appreciate 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.*

13. In the present case, the question as to whether the findings are based on some evidence is raised. The plea raised by the petitioner is that no evidence exists so as to reinforce the guilt of the petitioner as alleged by the respondents. The doctrine of “no evidence” as advanced by the petitioner is not a technical plea, it is a constitutional guarantee against arbitrariness. The principle is that a finding of fact cannot stand if it is based on no evidence at all. In such a situation, the decision is treated as arbitrary, perverse, and violative of principles of natural justice, and can be quashed under judicial review. In **“Union of India v. H.C. Goel 1963 INSC 187”**, the Supreme Court held that a finding unsupported by evidence is perverse and liable to be quashed. It was observed that:

“Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquiries held under the statutory rules. We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the learned Attorney-General, but we are unable to hold that on the record, there is any evidence which can sustain the finding of the appellant that charge No. 3 has been proved against the respondent.”

14. The principle was echoed in **“State of Andhra Pradesh v. S. Sree Rama Rao 1963 INSC 97”**, where the Court clarified that interference is warranted when the conclusion is such that no reasonable person could have arrived at it while observing that,

“The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or; where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds.”

15. Tested on this anvil, the charge in the present case rests on a singular circumstance: that the petitioner’s answers “tallied word for word” with the acts/manuals/text book. There is no allegation of recovery of incriminating material, no invigilator detected misconduct, no contemporaneous complaint was lodged, no witness deposed to any overt act of copying or use of unfair means, and

the allegation surfaced years later, upon scrutiny of answer sheets. The finding is thus inferential, not evidentiary.

16. Though the law does not forbid inference but the inference must always flow from proved primary facts. Here, the primary fact of copying is itself absent and what remains is suspicion arising from similarity of language. The maxim “*suspicio non est probatio*”—suspicion is not proof, assumes decisive relevance at this stage. As discussed in *H.C. Goel (supra)*, even in domestic inquiries, findings must rest on some material having probative value. Thus, suspicion, however grave, cannot substitute evidence. A conclusion drawn from an assumption that “verbatim reproduction is impossible without copying” is not evidence; it is an opinion unsupported by foundational facts. Administrative law does not permit punishment on the basis of speculative disbelief.

17. Equally telling is the admitted position that the petitioner failed in the very paper in which he is alleged to have cheated. While gain is not an essential ingredient of misconduct, its absence in a case resting purely on inference weakens the chain of reasoning. The doctrine of perversity is attracted where findings are based on conjecture, surmise or *ipse dixit*. This court is mindful of the fact that while the adequacy or sufficiency of evidence is not open to judicial scrutiny in judicial review, the existence of some evidence to support the finding is indispensable. The disciplinary findings must have a rational nexus with the material on record, ensuring that the exercise of power remains fair, reasonable, and free from arbitrariness.

18. The consultation with the Haryana Public Service Commission (HPSC) in the present case stands reduced to a mere formality. The Commission did not accord an unqualified concurrence to the proposed punishment, rather, it

specifically sought clarification from the Government regarding the basis for doubting the *bonafides* of the officer, the necessity of a fact-finding enquiry into the alleged use of unfair means, and the responsibility of the invigilating or supervisory staff connected with the examination. These queries clearly indicated that the Commission itself entertained serious reservations regarding the foundation of the allegations. The Commission further called upon the Government to justify the proposed punishment particularly when the delinquent officer was due to retire in the normal course on 29.02.2008 only. The Commission recorded that cogent and reliable evidence was lacking and that the proposed punishment was disproportionate, particularly at the brink of superannuation. These observations clearly reveal that the Commission itself entertained doubts regarding the foundation of the allegations and the proportionality of the proposed punishment.

19. However, despite these reservations expressed by the Commission, the Disciplinary Authority proceeded to impose the penalty of compulsory retirement while expressly ignoring the observations of HPSC, as is evident from the impugned order itself. Such an approach defeats the very purpose of consultation with the Public Service Commission contemplated under service jurisprudence. Consultation cannot be reduced to a mere ritualistic formality; the authority is required to give due and meaningful consideration to the opinion tendered by the Commission.

20. The mechanical rejection of the Commission's observations renders the decision-making process arbitrary and vitiated in law. Though its advice is not binding, as clarified by the Apex court in “*State of U.P. v. Manbodhan Lal Srivastava, 1958 SCR 533*”, it is not ornamental as consultation is meant to inject

objectivity in the decision of the disciplinary authority. Relevant extract is as under:

“Once, relevant regulations have been made, they are meant to be followed in letter and in spirit and it goes without saying that consultation with the Commission on all disciplinary matters affecting a public servant has been specifically provided for, in order, first, to give an assurance to the Services that a wholly independent body, not directly concerned with the making of orders adversely affecting public servants, has considered the action proposed to be taken against a particular public servant, with an open mind; and, secondly, to afford the Government unbiased advice and opinion on matters vitally affecting the morale of public services. It is, therefore, incumbent upon the Executive Government, where it proposes to take any disciplinary action against a public servant, to consult the Commission as to whether the action proposed to be taken was justified and was not in excess of the requirements of the situation.

Secondly, it is clear that the requirement of the consultation with the Commission does not extend to making the advice of the Commission on those matters, binding on the Government. Of course, the Government, when it consults the Commission on matters like these, does it, not by way of a mere formality, but, with a view to getting proper assistance in assessing the guilt or otherwise of the person proceeded against and of the suitability and adequacy of the penalty proposed to be imposed.”

21. Otherwise also, the principles of natural justice demand that a person be punished only upon establishment of misconduct through fair procedure and reliable material. When no complaint was made at the time of examination and no direct or circumstantial evidence establishes use of unfair means, the subsequent inference, drawn years later, does not satisfy even the standard of preponderance of probabilities. A disciplinary conclusion must arise from proved facts and it cannot be the product of hindsight speculation.

22. The punishment imposed of compulsory retirement fifteen days before superannuation, though otherwise a recognised major penalty, derives its legitimacy from the sustainability of the charge. Once the foundational charge collapses for want of proof, the superstructure of punishment cannot survive. The

doctrine of proportionality further reinforces this conclusion, as the extreme consequence of curtailing service benefits at the fag end of career demands a high degree of evidentiary assurance.

Conclusion

23. In view of the foregoing analysis, this Court holds that the charge of copying has not been established even on the standard of preponderance of probabilities. Once the substratum fails, the edifice of compulsory retirement cannot survive. Consequently, the show cause notice dated 24.09.2004 (Annexure P-6), the inquiry report dated 13.06.2007 (Annexure P-9) and the impugned order dated 14.02.2008 (Annexure P-12) imposing the punishment of compulsory retirement cannot be sustained and is liable to be quashed.

24. Accordingly, the present petition is **allowed**. The respondents are directed to treat the petitioner as having been retired in due course upon superannuation on 29.03.2008 and release all consequential benefits of pay or monetary arrears pending, if any, with an interest of 6% p.a. within a period of 4 weeks from the date of receipt of a certified copy of this order.

25. Pending applications, if any, stand disposed of.

25.02.2026
anuradha

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>:Yes/No</i>
<i>Whether reportable</i>	<i>:Yes/No</i>