214 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP-9638-2014
Date of Decision: 03.07.2025

Balwan Singh (Deceased through LRs)

…Petitioner

Vs.

State of Haryana and Others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Ishnoor Singh, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner.

Ms. Rajni Gupta, Addl. A.G., Haryana.

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JAGMOHAN BANSAL, J. (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of orders dated 20.03.2014 (Annexure P-7), 03.01.2014 (Annexure P-5) and 27.02.2013 (Annexure P-3).

2. The petitioner joined Haryana Police Force on 01.08.1985 as Constable. He from time to time was promoted to higher ranks. He was placed under suspension vide order dated 20.09.2011. The suspension order was revoked on 17.10.2011. He did not join service, thus, was again placed under suspension. This suspension order was again revoked on 25.05.2012. The petitioner rejoined service on 07.09.2012. In this way, the petitioner remained absent from duty from 17.10.2011 to 07.09.2012. The respondent on account of long absence from duty i.e. about 11 months dismissed him

from service. He unsuccessfully preferred appeal before the Appellate Authority as well as Revision before Director General of Police, Haryana.

3. Learned counsel for the petitioner submits that the petitioner and his wife were suffering from depression, thus, petitioner could not join service well within time and remained absent for the alleged period. The absence was beyond his control and was unintentional. The respondent while passing impugned order did not consider his length of service and entitlement to pension. The quantum of punishment needs to be examined. The awarded punishment is harsh.

4. *Per contra*, Ms. Rajni Gupta, Addl. A.G., Haryana submits that as per ACRs placed on record by petitioner, he was not a good Officer. His integrity was doubtful. He was multiple times awarded punishment which included punishment for absence from duty. On one occasion he remained absent from duty for 160 days and on the other occasion for five months, six days and four hours. He was awarded punishment of stoppage of five annual increments with permanent effect.

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

6. From the perusal of record, it is quite evident that petitioner was a habitual absentee. He was awarded major punishment on multiple occasions. The awarded punishment included forfeiture of five increments with permanent effect. The reporting authority in ACRs declared him unreliable, indisciplined and irresponsible. His integrity was also declared doubtful.

7. 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 v. Subrata Nath, 2022 SCC OnLine SC 1617*** while adverting 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 :-

> *"18. 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:*
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> *(a) the enquiry is held by a competent authority;*
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> *(b) the enquiry is held according to the procedure prescribed in that behalf;*
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> *(c) there is violation of the principles of natural justice in conducting the proceedings;*
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> *(d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
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> *(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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21. 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."*

8. 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.

9. The petitioner was concededly a part of disciplined force and he was bound to strictly follow the rules and regulations. Armed Forces cannot retain any undisciplined member. It is not case of the petitioner that he, for the first time, committed alleged offence and was subjected to harsh punishment. Had the alleged offence been his first offence, this Court could consider principle of proportionality and ask the respondents to reconsider quantum of punishment, however, as noted above, the petitioner was a habitual offender and was punished more than once. On one occasion, he was even awarded punishment of forfeiture of five increments. The case of the petitioner is squarely covered by judgment of Apex Court in ***Ex Sepoy Madan Prasad v. Union of India and others, (2023) 9 SCC 100***. The relevant extracts of the judgment read as: -

> *"11. It is apparent from the above table that the appellant was a habitual offender. There were four red ink entries and one black ink entry against him before the present incident cited at Serial No. (f) above. Such gross indiscipline on the part of the appellant who was a member of the Armed Forces could not be countenanced. He remained out of line far too often for seeking condonation of his absence of leave, this time, for a prolonged period of 108 days which if accepted, would have sent a wrong signal to others in service. One must be mindful of the fact that discipline is the implicit hallmark of the Armed Forces and a non-negotiable condition of service.*
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> *XXXX XXXX XXXX XXXX*
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> *18. For the aforesaid reasons, we do not find any infirmity in the impugned judgment [Madan Prasad v. Union of India, 2015 SCC OnLine AFT 887] passed by the AFT. The appellant had been taking too many liberties during his service and despite several punishments awarded to him earlier, ranging from imposition of fine to rigorous imprisonment, he did not mend his ways. This was his sixth infraction for the very same offence. Therefore, he did not deserve any leniency by infliction of a punishment lesser than that which has been awarded to him.*
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> *19. Accordingly, the present appeal is dismissed as meritless, while upholding the impugned judgment [Madan Prasad v. Union of India, 2015 SCC OnLine AFT 887]. The parties are left to bear their own costs."*

10. In the wake of above discussion & findings and afore-cited judgments, this Court is of the considered opinion that present petition

being bereft of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

03.07.2025
Prince Chawla

Whether Speaking/reasoned: Yes/No
Whether Reportable: Yes/No