IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-23223-2016 (O&M)
Date of decision: 13.05.2025

Dilbagh Singh ...Petitioner

Vs.

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

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Present: Mr. DS Patwalia, Senior Advocate with
Mr.Ayush Gupta, Advocate for the petitioner

Mr.Amarpreet Singh Bains, AAG, Punjab

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AMAN CHAUDHARY. J.

1. Challenge is to the charge-sheet dated 13.04.2010, punishment order dated 27.09.2013 as well as order dated 04.05.2016 passed by the appellate authority and for issuance of direction to the respondents for granting all pensionary benefits to the petitioner.

2. On evaluating the documents placed on record and having heard, there is found no substance in the submissions made on behalf of the petitioner.

3. The matter roots into an undertrial, having unfortunately fallen prey to the violent beatings by none other than the jail officials themselves, to which he succumbed.

4. It is axiomatic that the Division Bench of this Court while taking suo moto cognizance of the custodial death of Kewal Singh @ Gola son of Buta Singh while lodged in Central Jail, Ferozepur based on a newspaper article dated 22.04.2007, regarding which FIR No.184 dated 19.9.2007 was lodged and challan

filed against 8 persons, disposed of the petition vide judgement dated 15.02.2008 by awarding a sum of Rs.10 lac to the kin of the deceased with liberty to the Director General of Police, Punjab to recover the amount from the erring official of the State by observing thus:

> "In the present case, it is established that Kewal Singh who was remanded in judicial custody by the Court to the jail. When an individual is consigned in jail on trust by the Courts of law then the faith of people in the judicial system is trampled in case an inmate of jail is done to death by the officials of the State machinery. This is another added feature which compel us to award exemplary compensation.
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> The human dignity, torture, death caused to the under-trial Kewal Singh, a person who was under-trial, is in judicial custody. He was supposed to undergo imprisonment in terms of imprisonment to be awarded to him by the Courts. A police remand is looked upon, by the under-trial, his counsel, as a place where interrogation will be subject to coercive methods to elicit answers, therefore, there is always prayer that duration of police remand should be short, but in present case, under-trial, who is in judicial custody has been made subject of inhuman torture by Jail Authorities. A person who has committed an offence must be punished so as to set the society in order and that punishment of an offence becomes an example for others not to chose the path of crime, so that it is learnt that jail is not a place to inflict third degree torture inhuman, undignified and insensitive treatment. The instrumentalities of State, and the jail authorities, who are responsible to provide adequate facilities for the persons cannot deprive a person of his life. Nothing can be more serious than custodial death of an inmate in a jail. The whole concept

of human rights, life and liberty will be put to naught if this Court does not come heavily on the State and its officers for taking out the life of an under-trial without the authority of law."

5. The petitioner, Deputy Superintendent (Central Jail), Ferozepur, was issued charge-sheet dated 13.04.2010 under Rule 8 of Punjab Civil Services (Punishment & Appeal) Rules, 1970, enumerating the following charges:

"1. On 20.4.2007, Sh.Kewal Singh @ Gola son of Sh.Buta Singh had died due to his negligence.
2. He had used extra force to nab him and the jail staff had given beatings to him in his presence, due to which on account of injuries suffered by him in his head, he died.
3. He had not got the medical examination of the convict before entering him in the Ferozepur jail.
4. He was having a very loose control over his subordinates.
5. Due to the death of the above convict, Hon'ble Punjab & Haryana High Court in Civil Writ Petition No.13281 of 2007 - Court on its own motion Versus State of Punjab had passed the order to pay a sum of Rs.10,00,000/- (Rupees ten lacs only) to the legal heirs of the prisoner, for which financial loss has been caused to the Government. For this, he is responsible.
6. He had misused his official powers."

6. Pertinently, as per the enquiry report, Annexure P-5, on the day of the unfortunate incident, the then Superintendent was on leave and had handed over the charge to the petitioner, he being his Deputy. Extensive enquiry proceedings were conducted, relevant whereof reads thus:

6. Sh.Sukhdev Singh, PW-4 has stated that he had served as Superintendent in Central Jail, Ferozepur for the period from 2005 to 2009 and he had retired on 30.5.2011 as D.I.G. He has further stated that the death of the convict Sh.Kewal Singh son

of Sh.Buta Singh had occurred on 20.4.2007 in Central Jail, Ferozepur. But on that day, he was on leave and he had given the charge of the jail to Sh.Dilbagh Singh, Deputy Superintendent, CO. As per the version of the witness he had ordered in writing in this regard and informed the head office about this. The witness has produced a copy of the order as PW-4/A and stated that the CO had signed in general about his duty. He has produced a copy of the entry as PW-4/B and stated that both these copies are true as per the record.

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Sh. Dilbagh Singh, CO has admitted in his statement that on 20.4.2007, he was present in his house till the evening. But it is not to be believed that he had not been informed by Sh.Pritam Singh, Assistant Superintendent or any jail staff about the running away of Sh.Kewal Singh, convict at about 5.45 PM at the time of taking bath. It is also beyond imagination that after catching hold of the convict, when Sh.Major Singh, Head Warder had called Sh.Darshan Lal, witness for medical examination of the convict, then under what circumstances Sh.Dilbagh Singh, CO was not informed about the incident and nor he had done so at the time when Sh.Dilbagh Singh, CO had come to his duty. Because Sh.Dilbagh Singh, CO has stated that at 7.00 PM, when he went to count the prisoners, then Sh.Darshan Kumar, witness had told him that he had been coming after giving first aid and medicines to Sh.Kewal Singh, prisoner. It was also informed to the witness that the condition of the convict was alright.

Upon receipt of this information, it was very serious on the part of Sh.Dilbagh Singh, CO, of his not having seen the convict in the verandah and not inquiring about the facts and circumstances of running away of the convict and then catching him. The behaviour of the CO as Superintendent and Deputy Superintendent was very surprising. The incident of running away of a convict from the jail is not a normal thing

and it is not fair to ignore the action of Sh.Kewal Singh, convict as a routine. It is surprising that after the unsuccessful attempt of the convict of fleeing away, after getting him caught hold, his condition was such, that for giving him first aid and medicines, pharmacist was required to call upon to the site. When as a Superintendent, he was well aware that Dr.Mahindru, jail doctor was not on duty, then not inquiring about the whole incident and getting himself satisfied, was a grave misconduct. The act of having not seen ther convict in the verandah, is an act of irresponsibility. As per the provisions of the Jail Manual, CO was required to inquire into the matter of his own. It was necessary for him to ensure thesecurity of the convict, who had tried to run away and about his health, because the convict was kept in jail in judicial custody. The approach of the CO in this case was totally wrong and uncalled for. From his callous approach, negligence in performing his duty is proved.

Even after the death of Sh.Kewal Singh, convict, the act of CO of not inquired from the employees of the jail on duty, not taking any action of his own, after requesting the D.C., Ferozepur for the inquest in the case, shows his mischievous' conduct. The act of totally ignoring the entries in the record of the jail by the jail employees is very surprising. At the time of taking the convict in the ambulance, not giving any care by the CO, to the 13 injuries suffered by the prisoner, shows his conduct as suspicious. It seems that CO deliberately in connivance with the employees has unsuccessfully tried to hush up the case. But the matter was not remained silent as the same had come to the media. It is clear from the decision of the Sessions Court that the death of the convict was caused due to the use of extra force by the jail employees. In view of this decision, the act of the CO as Superintendent and Deputy Superintendent in performing his duty is an act of negligence and misconduct.

> In view of the above circumstances, the CO is not directly responsible for the death of Sh.Kewal Singh, convict and nor he is responsible for not having conducted the medical examination of the convict at the time of his entry in the jail. But all other charges are proved against him."

7. In response to the reply filed by the petitioner, remarks of administrative lapse were sent by the DGP (Prisons), Punjab to Principal Secretary of Home Affairs, (Jail Branch), vide order dated 14.01.2011, Annexure R/1/T with short affidavit dated 22.05.2024 of DIG Prisons, which reads thus:

> Regarding compensation for the legal heirs of the deceased of Kewal Singh alias Gola Singh.
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> In reference to the subject mentioned above and Government Memo No. 11/80/08-1 to/4315 dated 29-10-2010
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> 2 The para-wise comments on the reply given by Mr Dilbagh Singh Deputy Superintendent, Central Jail, Ferozepur (now retired) are as under-
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> Para:-1 The argument given by the officer is not acceptable because on 20.04.2007 he was present at the jail and in his presence the prisoner was beaten up and due to which he died.
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> Para:-2 It is correct as he stated that at the time of the incident he was not inside the jail, but he was present in his office and when the prisoner was being forcibly restrained, he should have immediately gone inside the jail and taken charge of the situation but he did not do so. It is correct that in inquiry conducted by ADGP (Crime) in compliance of the order of Hon'ble Punjab and Haryana High Court, he did not found guilty. It is also correct that Sh. Pritam Singh, Assistant Superintendent, Sh. Chinder Singh and Major Singh, Head Warders were sentenced to undergo life imprisonment in this case. But this official was found guilty in the inquest report

conducted by Deputy Commissioner Therefore he was charge sheeted by the State Government.

Para:-3 A medical examination of any new prisoner is compulsory to be conducted at the time of his admission in the jail by keeping his health at priority.

Para:-4 The act to control any prisoner forcibly, beating him by the jail staff in the presence of the Deputy Superintendent of the Jail, proves lack of control.

Para:-5 Hon'ble Punjab and Haryana High Court has awarded a compensation to the tune of Rs. 10 lakh to be paid by the State Government. If this officer fulfils his duties to control the situation at that time, this would not be happened. The official who found guilty primarily, were sentenced to undergo life imprisonment by Hon'ble District and Sessions Judge. But this official found guilty due to administrative slack on his part.

In addition to the above, it is clarified to the Government that total five officers/employees were involved in this case out of which three employees Sh. Pritam Singh, Assistant Superintendent, Sh. Chinder Singh and Major Singh Head Warders were sentenced to life imprisonment under Section 302 and fine of Rs. One lac. Apart from this, officers/employees Sh. Dilbagh Singh, Deputy Superintendent and Sh. Baldev Singh Warder have been charge sheeted by the government. In this case, the comments on the reply of Sh Dilbagh Singh's is being sent to the Government as per the above. Whereas Sh. Baldev Singh has not given any reply to the charge sheet. The Hon'ble High Court had directed to give compensation to the tune of Rs. 10 lakh to the legal heirs of the deceased prisoner and according to the direction of the Hon'ble High Court, the said amount has been paid. Now the question arises as to from which officer/employee, the amount of compensation should be recovered If the amount is distributed between the five officers/employees in equal shares, then Sh.

> Dilbagh Singh and Sh. Baldev Singh, will have to pay two lakh rupees each. The rest of the amount should be recovered or not from the punished employees, please take a decision at the Government level.

8. The disciplinary authority, holding the petitioner liable for not performing his duties responsibly, inflicted the punishment of 5% cut in his pension vide order dated 27.09.2013, P-7, paras relevant whereof read thus:

> "Inquiry officer has categorically stated that Sh. Dilbagh Singh, CO had confessed in his statement that on 20.04.2007, he was present in his house till evening. But the fact that Sh. Pritam Singh, Assistant Superintendent or other staff of the jail had not given him any information with regards to fleeing of Sh. Kewal Singh, prisoner at 5.45 PM at the time of taking bath, is not believable. It is also not understandable that after nabbing the convict, when Sh. Major Singh, Head Warder had called Sh. Darshan Lal, witness for giving first aid to the convict, then under what circumstances, he had not given the information about the incident to Sh. Dilbagh Singh, CO and nor Sh. Dilbagh Singh, CO had done so at the time of coming to his duty. The version of Sh. Dilbagh Singh, CO that when he came to his duty at 7.00 PM for checking the cases of release, then Sh. Darshan Kumar, witness had told him that he had been coming after giving first aid and medicines to Kewal Singh, convict. It has also been told to the witness that the condition of the convict was alright.
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> Upon receipt of this information, the act of not seeing the convict in the barrack, not getting enquired about the incident of fleeing and nabbing the convict, was very serious. The behaviour of the CO as Superintendent and Deputy Superintendent, Jail was very surprising. The act of fleeing from the jail by any convict is not an ordinary issue and to ignore this action by Kewal Singh is unfair. It is surprising that the condition of the convict after his nabbing was such that for

giving him first aid and medicines, pharmacist was to call on the spot and when the Superintendent was very well aware about the fact that Dr. Mahindru, Jail doctor was not on duty. The act of not getting enquired about all this by going to the barrack of the convict in order to satisfy himself, is an act of grave misconduct. By going to the barrack to see the convict was the act of responsibility. As per the provisions of Jail Manual, CO was required to enquire about the incident at his own level. He was required to ensure the safety and to get the information about his health was very necessary, but the convict was kept in jail in the judicial custody. The behaviour of the CO was totally wrong and unfair. From his callous behaviour, gross negligence in performing his duty is proved.

Dilbagh Singh could not say sufficiently in his defence and he has only said that his wife is not well and it was not his fault, although Superintendent, Sukhdev Singh Saggu was on leave, because his mother-in-law had died. Dilbagh Singh, Superintendent has pleaded for a lenient view.

I have perused the matter minutely and being the incharge of the jail, Dilbagh Singh had not performed his duty responsibly. Still by taking a lenient view, I award him the punishment of 5% cut in the pension of Deputy Superintendent, Jail, Sh. Dilbagh Singh, Superintendent."

9. In appeal, it was ordered that the cut of pension would continue for only two years from date of issue of the order by observing thus:

"I had given an opportunity of personal hearing to the officer on 11.4.2016 at 3.00 PM. During the personal hearing, Sh.Dilbagh Singh, Deputy Superintendent Jails (Retd) has reiterated those facts, which have already been mentioned in his appeal. His appeal deserves to be rejected on merits. But as the officer has now retired, in view of this, it is also admitted that a retiree has no other source of income except the pension, thus it has been proposed that while continuing with the orders of 5% cut in pension, it may be ordered that this cut will be

made for 5 years and after 5 years, this officer will be liable to get the full pension.

8. Jails Minister had considered the above proposal minutely. Since, he is a retired employee and is suffering from Hepatics, pension is the only source of his income for his survival as well as for his wife. In view of the comments received from the I.G. Prisons for considering the request of the officer sympathetically and keeping in view the natural justice, the effect of the order of the cut in pension Sh. Dilbagh Singh, Deputy Superintendent (Retd) to the tune of 5% will be for two years from the date of the issue of the order. After 2 years, full pension will be given to the officer."

10. The second appeal preferred by the petitioner was rejected on 30.08.2016, with the approval of the Minister (Jails), there being no provision in the Rules for the same.

11. So as to analyse the matter, it would be worthwhile to traverse through the judicial precedents. In **V.S.P. vs. Goparaju Sri Prabhakara Hari Babu,**[1] wherein, after perusing a catena of judgments, Hon'ble the Supreme Court held that the power of the High Courts to interfere with disciplinary matters is limited and circumscribed by well-known factors; a well-reasoned order cannot be set aside by it only on sympathy or sentiments. It was observed that, "Once it is found that all the procedural requirements have been complied with, the courts would not ordinarily interfere with the quantum of punishment imposed upon a delinquent employee. The superior courts only in some cases may invoke the doctrine of proportionality. If the decision of an employer is found to be within the legal parameters, the jurisdiction would ordinarily not be invoked when the misconduct stands proved."

[1] (2008) 5 SCC 569

12. Hon'ble the Supreme Court, while setting aside the judgment of the High Court whereby it had ordered to reconsider the employee's case with regard to punishment imposed, observed in **Damoh Panna Sagar Rural Regional Bank vs. Munna Lal Jain**[2] that, "The common thread running through in all these decisions is that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case [Associated Provincial Picture Houses v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)] the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision." Further that, "To put differently, unless the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further to shorten litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate it would be appropriate to direct the disciplinary authority or the appellate authority to reconsider the penalty imposed."

13. Similarly in **Govt. of India vs. George Philip**,[3] it was held thus:

> "11. It is trite that the Tribunal or the High Court exercising jurisdiction under Article 226 of the Constitution are not hearing an appeal against the decision of the disciplinary authority imposing punishment upon the delinquent employee. The jurisdiction exercised by the Tribunal or the High Court is

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[2] (2005) 10 SCC 84

[3] (2006) 13 SCC 1

> a limited one and while exercising the power of judicial review, they cannot set aside the punishment altogether or impose some other penalty unless they find that there has been a substantial non-compliance with the rules of procedure or a gross violation of rules of natural justice which has caused prejudice to the employee and has resulted in miscarriage of justice or the punishment is shockingly disproportionate to the gravamen of the charge. The scope of judicial review in matters relating to disciplinary action against employees has been settled by a catena of decisions of this Court and reference to only some of them will suffice. In B.C. Chaturvedi v. Union of India [(1995) 6 SCC 749 : 1996 SCC (L&S) 80 : (1996) 32 ATC 44] it was observed as under in para 18 of the Report: (SCC p. 762)
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> "18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

14. Although there is no quibble with the fact that there are no allegations against the petitioner of having given beatings to the

deceased-prisoner, however, this Court cannot lose sight of the fact that a precious human life was lost, in judicial custody.

15. Indubitably, the petitioner was the incharge of the jail, at the relevant moment and thus, he being oblivious of an incident of that magnitude taking place in the premises, ostensibly under his control and for him to gain knowledge thereof after everything was over, were facts, that he was unable to dispel during the proceedings conducted against him.

16. The prisoner having been sent to judicial remand by the Court, was as a matter of fact in its constructive custody given to the arms of the State, protection of whose was the primary responsibility of the authorities manning the jail. Urging to have been let off scot free on the premise of his being at his residence, is rather a valiant attempt, in the wake of the facts and circumstances as they exist and the evidence relied upon to indict him. Moreover, the learned senior counsel appearing for him, on a pointed query of this Court, was unable to refute that his official residence was not within the jail premises, though even if it were not, still he could not absolve himself of the charges against him.

17. The dereliction of duty of the petitioner is writ large which undoubtedly stems from the enquiry report that goes into micro detail regarding the allegations against him and after threadbear examination of all aspect thereof concluded that he, though not culpable for causing beatings leading to the death of the under-trial, yet was held guilty of loose control over his subordinate staff, which was duly proved in the well-reasoned findings.

18. Nothing could be shown that the case of the petitioner falls within four corners of the ambit of interference and there is no whisper of proper opportunity of having not been granted or any flaw in the procedure adopted.

19. Despite the overall conspectus, the appellate authority still having taken a clement view is incomprehensible by restricting the punishment to two years.

20. Tested on the aforesaid anvil, the present petition ex-consequenti sans merit, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

13.05.2025
Parveen kumar

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