IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

205 **CWP-422-2000 (O&M)**
Date of decision: 20.02.2025

K.B. SHARMA **….PETITIONER**

Vs.

ADMINSTRATOR, UNION TERRITORY, CHANDIGARH AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Amitabh Tewari, Advocate
for the petitioner.

Ms. Suman Jain, Advocate and
Mr. Rishabh Jain, Advocate
for the respondent.

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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 order dated 21.06.1999 (Annexure P-7) whereby he was awarded punishment of stoppage of two annual increments with cumulative effect.

2. The petitioner joined Chandigarh Administration as Junior Engineer in 1969. He was given charge of Superintending Engineer (B&R) in 1992. The respondent initiated departmental proceedings against him alleging absence from duty. The Disciplinary Authority passed order dated 21.06.1999 (Annexure-7) whereby punishment of forfeiture of two increments was awarded. The order dated 21.06.1999 is reproduced as below:-

"OFFICE OF THE COMMISSIONER, MUNICIPAL CORPORATION, CHANDIGARH.

ORDER

No.CMC/Estt.I/E-I/99/7412 *Dated:21.6.99*

Whereas, Shri K.B. Sharma, Superintending Engineer (B&R), Municipal Corporation, Chandigarh (Under Suspension) was served a memo of charges under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970, as applicable to the employees of Union Territory, Chandigarh, vide memorandum bearing No.CMC/SAE-1/E-I/98/5455 dated 17.7.1998 for committing gross misconduct by willfully absenting himself from duty.

2. And whereas, after considering the reply dated 11.8.1998 of the said Shri K.B. Sharma to the above charge-sheet, an Inquiry Officer was appointed to inquire into the charges framed against him.

3. And whereas, the said Inquiry Officer submitted his inquiry report on 11.3.1999 and a copy thereof was sent to the said Shri K.B. Sharma vide Memo No.CMC/SAE-I/E-I/99/2472, dated 5.4.1999 with an opportunity to make representation, if any, on the Inquiry Report.

4. And whereas, the said Shri K.B. Sharma made a representation dated 9.4.1999 to the said Inquiry Report.

5. And whereas after considering the inquiry report dated 11.3.1999 and also the representation dated 9.4.99 of Shri K.B. Sharma, I being the Disciplinary Authority has come to the conclusion that the first component of the first charge levelled against the aforesaid Shri K.B. Sharma that the said Shri Sharma absented from duty w.e.f. 8.6.98 without getting his leave sanctioned from the Competent Authority, has not been fully proved but the second component of the first charge that Shri Sharma did not give his address and telephone number to the office of the Chief Engineer and Commissioner, Municipal Corporation, Chandigarh stands proved beyond any doubt. The second charge of not contacting his immediate superior and showing in-

subordination also stands proved against the aforesaid Shri K.B. Sharma. In view of this, I am of the considered view that a penalty should be imposed upon the aforesaid Shri K.B. Sharma.

6. Now, therefore, in exercise of the powers conferred upon me under the aforesaid Rules of 1970, I hereby impose a penalty of stoppage of two annual increments with cumulative effect on the aforesaid Shri K.B. Sharma.

By order and in the name of the Administrator, Union Territory, Chandigarh
Sd/-

(S.K. Gathwal) IAS,

Commissioner

Dated, Chandigarh the:-
29th May, 1999"

3. 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 vs. Subrata Nath, 2022 LiveLaw (SC) 998** 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.** The relevant extracts of the judgment read as :

> *"19. 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 :*
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> > *"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;*
> >
> > *(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.

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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22. 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."*

4. Applying the law laid down by Hon'ble Supreme Court, this Court neither finds that punishment imposed by authorities is disproportionate to alleged offence nor finds any infirmity warranting interference of this Court. In the case in hand, the Commissioner, Municipal Corporation has recorded factual findings and there is no patent irregularity or infirmity in those findings. The findings recorded by Commissioner, Municipal Corporation, Chandigarh are findings of facts. A period of 25 years from the date of passing order to stop two annual increments with cumulative effect has passed away and petitioner retired on 30.04.2007. This Court keeping in mind judgment of Supreme Court in ***Subrata Nath (supra)*** does not find it appropriate to interfere with the impugned order.

5. Dismissed.

6. Pending miscellaneous application(s), if any, shall also stand disposed of.

20.02.2025 **[JAGMOHAN BANSAL]**
manoj **JUDGE**

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