2025:PHHC:039679-DB

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA No.851 of 2025 (O&M)
Date of Decision: 24.03.2025

Jaswant Singh Mor (since deceased) through his LR

…Appellant

Versus

State of Haryana and others

…Respondents

<u>CORAM</u>: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Present:- Mr. Sunil K. Nehra, Advocate
Mr. Rahil Mahajan, Advocate
Mr. Viren Nehra, Advocate and
Mr. Arjun Dosanj, Advocate
for the appellant.

Mr. Sanjeev Kaushik, Addl. A.G., Haryana.

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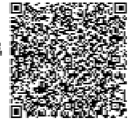
<u>SANJEEV PRAKASH SHARMA, J.(Oral)</u>

1. The appellant-writ petitioner is assailing the judgment passed by learned Single Judge dated 19.07.2024, whereby the writ petition was dismissed, holding the same to be devoid of any merit.

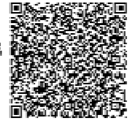
2. Learned counsel for the appellant has vehemently argued and submitted that although the copy of the Inquiry Report was supplied to him, the Disciplinary Authority had already made up its mind of dismissing him from service which is reflected in the show cause notice. He further submits that all the documents were with the police authorities and therefore, the writ-petitioner could not have been held guilty of the charges as there was no document available and it is a case of no evidence. Learned



counsel has further relied on the judgment rendered by the Supreme Court in ***Kuldeep Singh vs. The Commissioner of Police, 1999(2) SCC 10*** to submit that where there is no evidence in support of charges framed against the appellant, the person is entitled to exoneration and reinstatement. Learned counsel has also relied on the judgment passed by the Constitutional Bench of the Apex Court in ***Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others, (1993) 4 SCC 727*** to submit that where the Disciplinary Authority is different from the Inquiry Officer, he must give reasons for accepting the charges proved by the Inquiry Officer and thus, apply his mind separately to the subject case. He submits that the compliance of providing copy of the Inquiry Report, would not suffice where a decision has already been taken by the Disciplinary Authority. Learned counsel also submits that the writ-petitioner had been held guilty mainly for proof of Charge No.10, which was purely on the basis of the criminal case and in the criminal case, the writ-petitioner had been acquitted of the charge vide judgment dated 07.12.2001. Learned counsel has also taken us to the judgment passed by the learned Judge, Special Court, Karnal, to submit that it was actually a case of honourable acquittal as the respondent has not proved anything incriminatory against the petitioner, merely mentioning of giving benefit of doubt, would not come in his way.

3. We have considered the submissions as advanced.

4. Firstly, we notice that learned Single Judge has dismissed the writ-petition taking into consideration the law as laid down in ***SBI vs. Ajai***

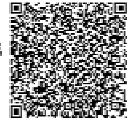


Kumar Srivastava, (2021) 2 SCC 612, which was also a case relating to a delinquency committed by a Bank employee. In the said case, the Apex Court had observed that the power of judicial review by the Constitutional Courts is very limited and it is the decision-making process which requires to be examined under the judicial review and not the ultimate decision. Taking clip from the said judgment, learned Single Judge has proceeded to hold that the petitioner was given due opportunity adhering to the principles of natural justice and he was allowed to participate in the departmental inquiry. The decision of the Inquiry Officer, holding him guilty of some charges, resulted in the passing of the order by the Disciplinary Authority, who has complied with the principles of natural justice providing the copy of the Inquiry Report to the writ-petitioner (appellant herein).

5. The Hon'ble Apex Court in the case of ***Union of India vs. Sitaram Mishra, (2019) 20 SCC 588*** held as under:-

> *"Consequently, the acquittal in the criminal case was not a ground for setting aside the penalty which was imposed in the course of the disciplinary enquiry. Hence, having regard to the parameters that govern the exercise of judicial review in disciplinary matters, we are of the view that the judgment of the Division Bench of the High Court is unsustainable."*

6. Apart from the aspects dealt with by learned Single Judge, we notice that the three Judges' Bench of the Apex Court in ***Central Industrial Security Force & ors. vs. Abrar Ali, 2017(4) SCC 507***, after considering the law laid down by the two Judges' Benches



in ***Union of India vs. P. Gunesekaran, 2015(2) SCC 610*** and ***State Bank of Bikaner and Jaipur vs. Nemi Chand Nalwaiya, (2011) 4 SCC 584***, observed as under:-

> *"9. We are in agreement with the findings and conclusion of the Disciplinary Authority as confirmed by the Appellate Authority and Revisional Authority on Charge No.1. Indiscipline on the part of a member of an Armed Force has to be viewed seriously. It is clear that the Respondent had intentionally disobeyed the orders of his superiors and deserted the Force for a period of 5 days. Such desertion is an act of gross misconduct and the Respondent deserves to be punished suitably."*

7. It would be worth-while to notice the scope of interference as pointed out in ***Union of India vs. P. Gunasekaran (supra)***, which 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:*
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> *a. the enquiry is held by a competent authority;*
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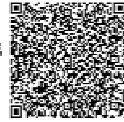
> *b. the enquiry is held according to the procedure prescribed in that behalf;*



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;

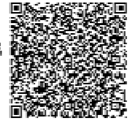
(iv). go into the reliability of the evidence;

(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."

8. In view of afore-said aspects, we find that this Court would not re-appreciate the evidence or interfere with the conclusions of the inquiry. In the present case, the Inquiry Officer after considering the evidence, which has been brought on record, held the petitioner not guilty of Charges No.1, 3 and 8 while holding Charges No.2, 4, 5, 6, 7 and 9

proved against him. So far as Charge No.10 is concerned, the same was independently examined and the petitioner was held guilty of the charge. In the criminal case, which was also hinging on the same charge as Charge No.10, the petitioner was acquitted giving the benefit of doubt. The Court observed that several documents had not been produced by the prosecution before the Court which resulted in drawing an inference as against the prosecution. In the circumstances, we do not agree with the contentions raised by learned counsel for the appellant as the appellant had been acquitted honourably. Granting him the benefit of doubt in the criminal case, would not result in any manner, disturbing the findings arrived at independently by the Inquiry Officers. It is also a specific contention raised by the respondents in their Reply before the Court that so far as the order of dismissal is concerned, the same does not only relate to Charge No.10 which has criminal reference but also is on the basis of the other charges which were found to be proved (supra). Findings of the Inquiry Officer as well as that arrived at after discussing the Inquiry Report by the Disciplinary Authority, are not the scope of discussion before us nor the same is amenable to judicial review. It is the process and the decision making aspects which we may examine. Having noticed all the facts as above, we are satisfied that the due process of law has been followed and the appellant-writ petitioner was given due opportunity to defend him. Principles of natural justice were followed. Rules were also duly applied. Merely by mentioning, the proposed punishment would not, in any manner, make the ultimate order of punishment vitiated.

9. The importance of the judgment passed by the Constitutional Bench of the Supreme Court in ***Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others (supra)*** is essentially to the aspects of supplying of copy of the Inquiry Report and whether the prejudice has been caused to a person to whom the copy of the Inquiry Report has not been made available. In the present case, we find that the copy of the Inquiry Report was supplied to the appellant-writ petitioner and an opportunity was granted to him to submit his objections with reference to the preliminary proposal of issuing of punishment order of dismissal to him. The Disciplinary Authority, after considering his Reply, has passed the final order. Thus, the orders passed by the Supreme Court in ***Union of India vs. Mohd. Ramzan Khan, (1991) 1 SCC 588*** as well as in ***Managing Director, ECIL, Hyderabad and others vs. B. Karunakar and others (supra)*** have been duly complied with and on that count too, the order cannot be said to be vitiated. The present appeal is accordingly dismissed.

10. Moreover, we find that the present appeal itself has been filed after so much delay and no case for condoning the delay in filing is made out. The application also stands dismissed.

11. All pending miscellaneous applications also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

24.03.2025 **(MEENAKSHI I. MEHTA)**
neetu **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*