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**(2013) 07 P&H CK 0898**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 5535 of 2011

ESI Ishwar Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

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**Date of Decision:** July 3, 2013

**Citation:** (2013) LabIC 3483 : (2013) 4 SCT 246

**Hon'ble Judges:** Tejinder Singh Dhindsa, J

**Bench:** Single Bench

**Advocate:** Bhim Singh, for the Appellant; Harish Rathee, D.A.G., for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

Tejinder Singh Dhindsa, J.

The petitioner, who is serving as ESI with the Haryana Police, has filed the instant writ petition impugning the order dated 27.4.2010, Annexure P4, whereby he has been imposed a penalty of stoppage of two annual increments with permanent effect and it has further been directed that the period of suspension i.e. 5.11.2009 to 15.12.2009 shall not be treated as duty period. Further challenge is to the order dated 11.6.2010, Annexure P6, whereby the Appellate Authority has affirmed the order of punishment. Brief facts of the case are that the petitioner joined the Police Department, State of Haryana as Constable on 23.10.1973. Thereafter, he earned promotions to the rank of Head Constable, ASI, and further as ESI in the year 2008. On 5.11.2009, the petitioner was proceeded against departmentally on the following article of charge:

Summary of charge:

The charge upon you, ESI Ishwar Singh No. 221/Ambala, is that when you were posted as Incharge at Police Post Karadhan, on 03.11.09 the Station House Officer, Ambala Cantt on the orders of higher officers, reached for checking at Police Post, Karadhan, Police Station Mahesh Nagar. During checking the foul smell of alcohol

was coming out from your mouth upon which a DDR No. 18 dated 03.11.09 was entered at Police Chowki, Karadhan Police Station, Mahesh Nagar and his medical check up was got done by writing a separate letter to Civil Hospital, Ambala Cantt. The doctor in his report mentioned as Consumed Alcohol. In this way you being a member of disciplined force by consuming liquor on duty has shown grave negligence and indiscipline, which is against the police rules.

2. The Enquiry Officer furnished enquiry report dated 26.3.2010 exonerating the petitioner. The Punishing Authority, however, differed with the findings returned by the Enquiry Officer and, accordingly, served upon the petitioner a disagreement note/show-cause notice dated 1.4.2010, Annexure P2, wherein a penalty of stoppage of five increments with permanent effect was contemplated. It is pleaded that the petitioner submitted a detailed reply to such show-cause notice. The Superintendent of Police, Ambala vide impugned order, dated 27.4.2010, after having considered the reply submitted by the petitioner to the show-cause notice and having also afforded the petitioner an opportunity of personal hearing has imposed the penalty of stoppage of two annual increments with permanent effect. The petitioner availed of his statutory remedy of filing an appeal but the same has been rejected vide order dated 11.6.2010 passed by the Inspector General of Police, Ambala Range, Ambala Cantt.

3. Learned counsel appearing for the petitioner has argued that the petitioner has been falsely implicated on the charge of taking liquor while on duty and attributes a motivated attempt in this regard at the hands of SHO, Ambala Cantt. It has been argued that during the departmental enquiry, no documentary evidence in the nature of a complaint made by a public person etc. had been adduced towards the petitioner having consumed alcohol. That apart, it has been argued that it is upon due appreciation of evidence that the Enquiry Officer had exonerated the petitioner and as such, there was no occasion for the Punishing Authority to have differed with the findings returned by the Enquiry Officer. Learned counsel has further urged that there is no concrete finding against the petitioner as regards having consumed alcohol while on duty. The case set up on behalf of the petitioner is that he had an unblemished record of service and as such, the major penalty of stoppage of two increments with permanent effect is harsh and disproportionate to the charge levelled against him.

4. Per contra, learned counsel appearing for the State would submit that the impugned order has been passed upon due process of law having been followed. It has been stated that the petitioner has been afforded opportunity at each and every stage i.e. during the course of departmental proceedings as also upon the disagreement note having been recorded by the Punishing Authority. State counsel has argued that consumption of liquor while on duty is a gross mis-conduct and dereliction of duty and as such, there would be no scope for leniency.

5. Learned counsel for the parties have been heard at length and the pleadings on record have been perused.

6. A perusal of the impugned order would reveal that the Punishing Authority had afforded an opportunity of personal hearing to the petitioner on 20.4.2010. The Punishing Authority has taken cognizance of the report submitted by the Medical Officer wherein it was stated "in my opinion he has consumed alcohol but not under toxic influence of it". It has also been noticed that the petitioner had consumed liquor while on duty at the police post. Still further, the Punishing Authority has differed with the findings of the Enquiry Officer as regards the stand taken by the delinquent during the course of enquiry proceedings that he had consumed an Ayurvedic Tonic which contained a certain quantity of alcohol. The Punishing Authority has reasoned that the delinquent as also the defence witness i.e. Dr. Ram Nath Sharma, J.A.M.S. had not submitted any proof during the course of enquiry regarding purchase of such medicine i.e. Ayurvedic Tonic and further no written prescription had also been adduced on record by any Medical Officer so as to substantiate the consumption of the same.

7. The reasoning adopted by the Competent Authority cannot be construed as extraneous or irrational. The jurisdiction of this Court to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Court would not interfere with the findings of the Competent Authority unless the same are shown to be totally arbitrary or utterly perverse. The power to impose penalty of a delinquent official is conferred on the Competent Authority either by an act of legislature or Rules made under the proviso to Article 309 of the Constitution. The Court cannot interfere with the penalty if conclusion of the Competent Authority is based on evidence even if some of it is found to be irrelevant. The petitioner has not been able to demonstrate any procedural infirmity or error in the proceedings carried out by the Punishing Authority which culminated in the passing of the impugned order. It is by now well settled that it is not permissible for the High Court under Article 226 of the Constitution of India to re-appreciate evidence which has been considered by the Disciplinary and Appellate Authority and as such, cannot sit over the findings of the Disciplinary Authority as an Appellate Court. In this regard, the following observations of the Hon'ble Supreme Court in [State Bank of India and Others Vs. Ramesh Dinkar Punde](#), ) would be relevant:

Before we proceed further, we may observe at this stage that it is unfortunate that the High Court has acted as an appellate authority despite the consistent view taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an appellate authority. Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate

Authority. (See [Govt. of A.P. and Others Vs. Mohd. Narsullah Khan,](#)

8. For the reasons recorded above, I find no basis that would warrant interference in the impugned order. The writ petition is, accordingly, dismissed.