Before Rajiv Narain Raina, J.

NACHATTAR SINGH— *Petitioner*

versus

STATE OF PUNJAB AND OTHERS— *Respondents*

CWP No. 3233 of 2016

February 17, 2016

Constitution of India, 1950— Art. 20(2)— Dismissal order— In instant case, petitioner being in service was caught supplying drugs in Central Jail — Petitioner dismissed from service without concluding the inquiry— Petitioner has been dismissed from service on 10 th June, 2015 — Petitioner was caught red handed selling intoxicating tablets to the Jail inmates, which is a serious dereliction of duty and a grave misconduct— Interference by the High Court with the order of dismissal only on the ground that it deprives the delinquent of his livelihood, is wholly untenable— Petition dismissed in limine.

Held that interference by the High Court with the order of dismissal only on the ground that it deprives the delinquent of his livelihood is wholly untenable reason for striking down the impugned order as it is a natural consequence of a valid dismissal.Petition is hereby dismissed in limine.

(Para 14)

Rajeev Anand, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

(1) This case represents an ugly face of drug abuse and drug running in a Punjab jail facilitated by jail officials. The petitioner was a Warder posted in Central Jail, Bathinda on the date of the incident i.e. 5th May, 2012, whichled to the drastic administrative action taken against him dismissing him from service of the Jail Department, Punjab. On 5th May, 2012, the petitioner was admittedly on duty at Tower No.2, when on suspicion a prisoner namely JarnailSingh @ Jaila was searched by the Head Warder Mohan Singh in the presence of the Deputy Superintendent, Jail. They search party found on Jarnail Singh's person 400 pills of Alprex and Lomotil along with four currency notes of Rs.500 denomination each. Also found was a

polythene bag containing 150 gms of broken brick. On being asked from where the drugs came, Jarnail Singh confessed to the Deputy Superintendent that the petitioner – Nachattar Singh gave him these pills to be supplied in the prison and money was to be given to him for helping out. Further still, the petitioner was to supply more pills to be sold inside the prison stock coming between 12.00 to 3.00 PM while he was onduty.

(2) The prosecution story is that the Deputy Superintendent, Head Warder Mohan Singh and Warder Harbans Singh went to search the petitioner at Tower No.2 from where they recovered 1000 drug pills from his trouser pocket. Soon thereafter FIR No.78 was registered under Section 22 of the Narcotic Drugs and Psychotropic Substances Act 1985 against the petitioner and prisoner Jarnail Singh lodged at Police Station Civil Lines Bathinda. The petitioner was arrested on the same day at 5.00 PM. He was suspended from service on 8th May, 2012 by the Superintendent Central Jail, Bathinda w.e.f. 5th May, 2012. Apart from the criminal proceedings launched, a departmental inquiry was instituted against the petitioner for the commission of the same offence as in the criminal case. However, instead of concluding the inquiry, the petitioner was dismissed from service on 9th April, 2013 invoking Article 311(2) (b) of the Constitution of India holding that it was not reasonably practicable to hold an inquiry against the petitioner. The Special Judge, Bathinda acquitted the petitioner vide judgment dated 12th November, 2014 and while relying on several infirmities in the case of the prosecution, the Court thought it safe to conclude that the prosecution failed to prove its case free from doubt.

(3) Having secured an acquittal from the criminal court on a drug charge, the petitioner claimed reinstatement in service by making a representation/appeal for justice to the department. When he did not receive response on the representation, he filed CWP No.19593 of 2014 before this Court. The petition was disposed of on 19th September, 2014 with a direction tothe competent authority to consider and decide the appeal of the petitioner as expeditiously as possible, preferably within a period of three months from the date of receipt of certified order. In reconsideration of the case, the disciplinary authority recalled the order of dismissal dated 9th April, 2013. This fresh order was passed on 7th January, 2015. The Additional Director General of Police (Jails), Punjab, Chandigarh while setting aside the dismissal order passed under Article 311(2 (b) gave liberty to the Superintendent, Headquarter Jail, Ferozepur to initiate disciplinary inquiry under rules

within three months. A departmental inquiry lying dormant awaiting result of criminal trial was conducted against the petitioner. The petitioner participated in the inquiry. The inquiry went against him when charge was proven. The report was supplied and he was offered opportunity of personal hearing on 28th April, 2015. The petitioner has been dismissed from service on 10th June, 2015.

(4) The petitioner appealed against the dismissal order to the Additional Director General of Police (Prisons), Punjab, Chandigarh. The standof the petitioner in appeal was that the inquiry was defective and was aimed at meeting a pre-determined end to anyhow dismiss the petitioner from service. More importantly, he asserted that the procedure adopted after the acquittal in the criminal trial was in violation of his fundamental rights under Article 20(2) of the Constitution of India, which protects citizen from being prosecuted and punished for the same offence more than once. It may be recalled that a charge memo was issued to the petitioner at the time the criminal prosecution was launched, but was not carried out through the means of a regular inquiry since the petitioner was visited by a dismissal under Article 311(2) (b) of the Constitution. With the revocation of the dismissal order, the departmental inquiry proceedings, the petitioner argues, could not have been put in motion or activated to visit the petitioner with the extreme punishment of dismissal from service based on a departmental inquiry which was neither fair nor proper since he had been acquitted of the same charge. The action suffered from vice of double jeopardy.

(5) He contends through his learned counsel that in the domestic proceedings, the statements recorded in the criminal trial could not be traversed again to come to a different conclusion on the same evidence weighed by the Court in his favour. The trial Court had held it improbable for 1000 pills to be found on the person of the accused-petitioner. The charge in the departmental inquiry arose out of the same transaction and similar allegation regarding recovery of contraband was alleged against the petitioner while he has been honourably acquitted of the charge of possession of the contraband. Then on the same evidence and grounds the accusation in the departmental inquiry action could not be sustained and the punishment of dismissal was severely harsh in dispensation of punishment and extreme in character which deprived the petitioner of his right to livelihood and liberty preserved by the Constitution. His case of dismissal was required to be reviewed in his appeal with appropriate

direction for re-instatement in service with continuity and restoration of consequential benefits from the date of termination. The petitioner's fundamental rights guaranteed under Article 20(2) of the Constitution have been infringed. The result could not be achieved on the same facts, in the same circumstances and in the face of recorded testimonies of witnesses which failed to weigh with the trial Court as sufficient to concludeguilt.

(6) Notably, a perusal of the judgment of the Special Judge, Bathinda reveals that seven prosecution witnesses were produced of which none were produced in the domestic inquiry. In the domestic inquiry, the statements of Mohan Singh, Head Warder; Harbans Singh and Jaswinder Singh, Warders and Balbir Singh, Assistant Superintendent, Central Jail, Bathinda were recorded, who were not produced as witnesses in the criminal trial [as it appears from the file: judgment and report]. The charge in the disciplinary proceeding was in relation to supply of drugs/pills and of possession of drug pills at Tower No.2 while on duty. The Inquiry Officer-cum-Deputy Superintendent, Modern jail, Faridkot found the charge proved in his report. The appeal was rejected upholding the finding that the petitioner was caught red handed selling intoxicating tablets to the jail inmates, which is a serious dereliction of duty and grave misconduct.

(7) Mr. Rajeev Anand, learned counsel appearing for the petitioner, has relied on a selection of judgments of the Supreme Court in ***Capt. M. Paul Anthony*** versus ***Bharat Gold Mines Ltd. & another***[1] *and* ***G.M.Tank*** versus ***State of Gujarat & others***[2] to contend that the petitioner cannot be vexed twice for the same offence/misconduct following his acquittal on the same material and charge. Counsel further argues that once the disciplinary authority exercised quasi judicial power and took a decision on 9th April, 2013 dismissing the petitioner holding that it is notreasonably practicable to hold an inquiry it cannot review its decision. Since the disciplinary authority becomes *functus officio* in respect to an order made by him. This argument is fallacious. When an order passed under Article 311(2) (b) is faulted either by the Court or by the disciplinary authority or by superior administrative authority then the competent authority is never precluded from holding a regular domestic inquiry on the same charge, and can always go into the conduct of an employee on principles of

[1] (1999) 3 SCC 679
[2] (2006) 5 SCC 446

preponderance of probabilities after holding an inquiry. The charge may have failed to meet standards required in a criminal trial, but that does not mean a disciplinary proceeding is barred even in the same facts and circumstances.

(8) The judgments in ***M. Paul Anthony*** and ***G.M.Tank*** cases are decisions based on testimonies of the same witnesses who were produced in thecriminal trial and in the domestic proceedings. In the present case, this is notso. The witnesses in the domestic inquiry were different from the witnesses produced in the criminal trial. Therefore, the decisions are distinguishable on facts. As explained in ***M.V.Bijlani*** versus ***Union of India & others***[3], it is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi criminal in nature, there shouldbe some evidences to prove the charge. Although the charges in a departmentalproceedings are not required to be proved like in a criminal trial i.e. beyond all reasonable doubts, one cannot lose sight of the fact that the Enquiry Officer performs a quasi judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact; he cannot shift the burden of proof; he cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures and he cannot enquiry into the allegations with which the delinquent officer had not been charged with. [*see para. 25 of the report*].

(9) I fail to see how ***M.V. Bijlani*** case can help the petitioner to brush aside the departmental proceedings on the question of maintainability despite acquittal. All acquittals by the criminal court on a criminal charge are honourable in future. So long as the government servant facing a disciplinary proceeding is allowed a reasonable opportunity to meet the charges against him in an effective and fair manner he cannot make a legitimate grievance in a court of law. Such rights have not been breached in this case. As far as the arguments addressed by Mr. Anand revolving around bias and impartiality are concerned, those are not of any importance to the decision since personal mala fides or bias have not been alleged against any of the officers amongst the respondents who took decisions against the petitioner. It is trite to say that every citizen is entitled to a fair,

[3] AIR 2006 SC 3475

impartial and just treatment, which is protected by Article 21 of the Constitution. I find that no cogent argument was addressed to dismiss the disciplinary proceedings as vitiated for error or wantof adherence to procedure of holding inquiry and breach of the rules of natural justice, which safeguards were provided to the delinquent during the course of the domestic trial.

(10) In a quasi criminal domestic proceeding of the kind under review especially in the setting of jail premises with respect to the charge of gross misconduct, grave and serious suspicion can in my view be sufficient to bring home the charge on the preponderance of probabilities based on the oral testimonies of the prosecution witnesses produced in the inquiry, provided the suspicion is *bona fide*, reasonable and renders the continued employment relationship intolerable to jail administration. Although suspicion, howeverstrong or reasonable as it may appear to be, remains a suspicion and does not constitute misconduct but if there is tangible parol evidence based on honest reconstruction of events leading to misconduct then the hairline difference must weigh in favour of the prosecution case, the burden of dispelling doubts and suspicion at that point shifting to delinquent.

(11) It also cannot be held that the witnesses produced by the prosecution in the domestic trial were a bunch of liars or had a personal axe to grind against their colleague or were driven by animosity. Such has not been pleaded in defense. The evidence is contemporaneous and immediate to the events of 5th May, 2012 as had unfolded. The writ Court does not sit in appeal over the findings recorded by the Inquiry Officer, as affirmed by the appellate authority, unless the findings are perverse, irrational or such which no reasonable person would take in the same set of facts and circumstances. I would, therefore, not think it proper to interfere in the impugned orders dismissing the petitioner from service at the age of 56 for drug peddling in Jail and sale of narcotics and psychotropic substances. I have considered the observations made by the learned Special Judge, Bathinda in para. 20 of the judgment, found at pages 60-61 of the paper-book, as vehemently read and stressed upon by Mr. Anand to be in favour of his client, I would only say on those observations that the prosecution failed to bring home the charge on standards of strict proof required in a criminal trial which may relate to drug abuse in jails which cannot be without inside help. The prism of proof thus changes in a domestic setting where the question is whether the officer is fit to be retained in service having committed in all

probability what qualifies as grave misconduct warranting the extreme penalty of dismissal. I would therefore not like to disagree with the authorities who inflicted the punishment that it was the just and meet thing to have done in the circumstances and besides that interference on quantum of punishment is not legally permissible in the limited jurisdiction of secondary review of the decision making process or within the purview of authority exercised by the writ court under Article 226which remains discretionary.

(12) Lastly, interference by the High Court with the order of dismissal only on the ground that it deprives the delinquent of his livelihood is wholly untenable reason for striking down the impugned order as it is a natural consequence of a valid dismissal.

(13) As a result, the petition is hereby dismissed in limine.

(14) Nevertheless, the dismissal of the petition will not preclude the department from considering compulsory retirement in lieu of dismissal in case a request is made and if it is, the request may be examined in accordance with rules or such plea can be accommodated keeping in view the totality of circumstances given that the petitioner was nearing the age of retirement. This issue is thus left open to Jail administration.

Payel Mehta