IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 4825 of 2004
Reserved On : July 08, 2015
Pronounced On : 13.07.2015

Santokh Singh .... Petitioner

vs.

State of Punjab and others .... Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. G. S. Bal, Senior Advocate
with Mr. A. D. S. Bal, Advocate
for the petitioner.

Mr. Sushant Maini, DAG, Punjab.

Ms. Sukhmani Tiwana, Advocate
for respondent no. 4.

* * *

<u>DEEPAK SIBAL, J.</u> :

Through the present petition, the petitioner challenges order dated 03.08.1999 (Annexure P-8), through which he was inflicted upon the punishment of dismissal from service; order dated 10.05.2000 (Annexure P-10), through which his appeal was dismissed by the Appellate Authority;

order dated 02.04.2002 (Annexure P-13), vide which the petitioner's revision petition was dismissed and order dated 16.01.2004 (Annexure P-15), dismissing the petitioner's second revision petition. The petitioner further prays that consequent upon the quashing of the above referred impugned orders, the petitioner be ordered to be reinstated in service with all consequential benefits.

Shorn of unnecessary details, the relevant facts, which can be culled out from the arguments raised at the bar and which have emerged from the perusal of the record are that while the petitioner was serving the respondent – Budhlada Cooperative Sugar Mills Ltd., District Ropar (hereinafter referred to as – the Mill) as Assistant Cane Development Officer, he was served with a charge-sheet dated 04.05.1995 on the allegations of embezzlement and misappropriation. The petitioner's reply to the charge-sheet, having been found to be unsatisfactory, an Inquiry Officer was appointed to go into the veracity of charges levelled against him. In the departmental inquiry which ensued, vide Inquiry Report dated 30.01.1998 (Annexure P-5), the petitioner was found guilty of embezzlement and misappropriation. A Show Cause Notice, along with a copy of the Inquiry Report, was served upon the petitioner, to which he submitted a reply, on consideration of which, the impugned order dismissing the petitioner from service was passed. The petitioner filed an appeal against the punishment order, which was dismissed by the Appellate Authority. The revision petition filed by the petitioner met the same fate. After the dismissal of the revision petition, the petitioner filed another revision petition, which was also dismissed. It is thereafter that the petitioner has preferred the present writ petition for the reliefs referred above.

I have heard learned counsel for the parties and with their able assistance, have also gone through the record of the case.

Learned senior counsel appearing on behalf of the petitioner argued that the punishment inflicted upon the petitioner was on the basis of certain bills, which remained unproved as no witnesses were examined during the course of the inquiry, who would prove them. It was submitted that once no witnesses were examined, the petitioner did not get the opportunity to cross-examine them. According to learned senior counsel, this was a major procedural flaw in the inquiry proceedings and enough to set at naught the entire disciplinary proceedings held against the petitioner, the impugned dismissal order, the appellate order and the orders passed in first and second revision petitions. In support of his arguments, a judgment of this Court in the case of **K. C. Arora vs. State of Haryana and others** reported as **1996 (4) RSJ 695** was cited. It was further argued that the Inquiry Report was based on surmises and conjunctures and that no charge against the petitioner stood proved.

Responding to the arguments of learned senior counsel, counsel for the respondents argued that embezzlement and misappropriation by the petitioner had been fully established in the regular departmental inquiry. The punishing Authority, after evaluating the findings of the

Inquiry Officer, as also the reply submitted by the petitioner thereto, while upholding the findings of the Inquiry Officer, had ordered that the petitioner be dismissed from service. That dismissal order had been upheld by both – the Appellate Authority as also the Revisional Authority. It was thus submitted that findings of fact which had been upheld at different stages required no interference by this Court.

It was further submitted that the required procedure was followed by the Inquiry Officer and that the Inquiry Report was given only after affording adequate opportunity to the petitioner to defend himself.

The charges against the petitioner are serious. They are of embezzlement and misappropriation and have been fully established in the regular departmental inquiry held against him. The finding of guilt against the petitioner was recorded by the Inquiry Officer as under :-

> *"On going through the date of cane seminars held from 29.9.92 to 18.10.1992 and assuming that the expenditure was incurred by ADCO during this period, from the fact that ACDO obtained advance of Rs.10,000/- on 13.3.93 against the same expenditure, <u>I observe that the statement given by Sh. Santokh Singh, ACDO is not correct. The bills whicih have been collected in March/October 1993 are apparently fake bills because there has been no seminar in</u>*

March 1993 and the advance taken on 13.3.93 was merely to misappropriate the amount. The bills were collected, verified and shown paid by ACDO, Sh. Santokh Singh through his advance. Had the expenses being actually incurred in October, 1992 on cane seminar the bills raised would have been credit bills and payment would have also been released through cheques in March 1993. So, I hold ACDO Sh. Santokh Singh responsible for embezzlement of Rs.10,000/- taken as advance. The bills having the year 1993 for Jhunir and Bhikhi, which amount to Rs.2500/- and Rs.4210/- respectively were collected by ACDO, Sh. Santokh Singh merely to square up his advance. He has verified these bills and given certificate of payment by him. Details of such fake bills are as under :-

Division of Seminar	***Date of Bill***	***Amount***
Jhunir	*17.10.93*	*700.00*
	17.10.93	*300.00*
	17.10.93	*1500.00*
Bhikhi	*18.10.93*	*210.00*
	18.10.93	*3000.00*

18.10.93	*<u>1000.00</u>*
Total	*<u>6710.00</u>*

<u>Details of further adjustment made upto Rs.10,000/- are not available</u>.

<u>As against Charge No. 2</u>

The sum of Rs.2000/- claimed by Sh. Santokh Singh ACDO has been shown as verified and paid by him in his claim of Rs.19,990/- at Sr. No. 8 (copy placed at CP.31). The counterfoil of receipt no. 000690 dt. 10.10.93 shows receipt of Rs.200/- only. Though counterfoil does not conclusively substantiate that Sh. Santokh Singh has misappropriated the amount and there is a possibility of misappropriation by the official issuing receipt on behalf of Mr. Sanatam Dharam Bhartiya Mahavir Dal (Regd.) by showing less amount in counterfoil, yet date of counterfoil, i.e. 10.10.93 (C.P.91) instead of 10.10.92 on original bill, signifies that it is one of the fake bills, collected, verified and claimed by ACDO in October 1993. However, since embezzlement of Rs.10,000/- has already been established and details of fake bills noticed are only Rs.6710/-, it *is possible that the receipt obtained by Sh. Santokh Singh for Rs.2000/- is fake and a part of embezzlement of Rs.10,000/- taken by him as advance on 13.3.93. So, I conclude that charge leveled at Sr. No. 2 of the Chargesheet is correct.*

[Emphasis supplied]"

From the above quoted portion of the Inquiry Report, it is abundantly clear that the petitioner was found to have submitted fake and fabricated bills and the sole object, which was established behind the same, was misappropriation and embezzlement of funds. A specific finding has been recorded that in order to adjust the advance of Rs.10,000/- taken by the petitioner, he had got fake bills made for Rs.6710/-. These bills were shown to have been paid by the petitioner, but for the same, no receipts were produced by him. Further, these bills pertained to amounts spent on certain seminars but the record revealed that on the dates so mentioned in the bills, no seminars had taken place. Still further, the advance taken by the petitioner was Rs.10,000/-, but bills of only Rs. 6710/- were produced by him. No explanation at all was put forth by him so as to how and in what manner he had utilized the balance of the advance taken by him. These findings of fact have been accepted by the punishing Authority and upheld by the Appellate Authority and the Revisional Authority. That being so, while exercising jurisdiction under Article 226 of the Constitution of India, I am not inclined to interfere with the above quoted findings, which have concurrently been upheld by successive Authorities.

The submissions of the learned senior counsel appearing on behalf of the petitioner, questioning the procedure followed during the inquiry proceedings, are required to be considered only to be rejected. The petitioner had taken an advance of Rs.10,000/- to be spent on certain seminars. No explanation at all had been given by him with regard to adjustment of Rs.3290/-. This was enough to held him guilty of embezzlement and misappropriation of funds. Even with regard to the explanation offered by him qua Rs.6710/-, it is he who had relied on certain bills with an attempt to show adjustment of Rs.6710/-. Once he himself has relied upon those bills, he could not complain of non-production of witnesses to prove them. The explanation offered by the petitioner did not find favour with the Inquiry Officer, who found the bills in question to be apparently fake and fabricated as they pertained to amounts spent on seminars which admittedly had not taken place on the dates mentioned on the bills. No receipts were produced by the petitioner showing utilization of the amount of advance taken by him.

In the judgment cited by learned senior counsel for the petitioner in the case of **K. C. Arora** ***(supra)***, the Inquiry Officer did not fix any date for the production of evidence for the department and did not follow the procedure laid down in Rule 7(2) of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, as applicable to Haryana. The Court also found that the Inquiry Officer had adopted a novel method of calling upon the delinquents to make their statements in the first instance and he gave similar opportunity to the departmental representatives to make their statements and to produce the documents from time to time. Not even the copies of the documents, which had been filed during the course of proceedings of the inquiry, were made available to the delinquent officials so as to enable them to prepare for their defence to counter those documents. It is in this background that the Court held that the filed documents needed to be proved by the persons, who prepared them. The facts in **K. C. Arora's case** ***(supra)***, when compared to the facts of the case in hand, are completely distinguishable.

In view of the above, finding no merit in the present writ petition, the same is dismissed with no order as to costs.

(DEEPAK SIBAL)
JUDGE

Pronounced On : 13.07.2015
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