

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP- 15607-2009 (O&M)
Date of Decision : 23.07.2015**

Shambu Ram

..... Petitioner

versus

Uttar Haryana Bijli Vitran Nigam & anr.

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. I.D.Singla, Advocate
for the petitioner.

Mr. Mohnish Sharma, Advocate
for the respondents.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (ORAL)

By this petition the petitioner has challenged the action of the respondents in issuing him warning and treating the period of his suspension as leave of the kind due.

The brief facts are that the petitioner was working as a Lineman with the respondent-Corporation. On 28.05.2003 an FIR was registered against him under Section 7 of the Prevention of Corruption Act on the allegations that he had been caught red handed getting a bribe of Rs.500/- from one Kulwant Singh. The petitioner was suspended and a charge sheet on the same charge was also issued to him. Ultimately the trial Court came to the conclusion that the notes which, as per prosecution case, were to be signed by the authority, did

not bear any signature and further the complainant-Kulwant Singh also exculpated the petitioner by stating that it was not him who had taken the money. On this ground the trial Court acquitted the petitioner. The petitioner filed reply to the chargesheet taking this stand that he had been acquitted and that the complainant had exculpated him. An application for leave to appeal filed by the State was also dismissed by this Court. After considering the reply order was passed holding that the reply was not satisfactory but the matter was brought to an end by issuing a warning to the petitioner. It is subsequent to that that impugned order (Annexure P-7) has been passed.

The contention of the learned counsel for the petitioner is that notwithstanding the fact that the trial Court had used the phrase, 'benefit of doubt' while acquitting the petitioner yet, it was a case where there was no evidence since recovery was not proved and even the complainant had exculpated the petitioner. As per him this would amount to full exoneration under Rule 7.3 of the Punjab Civil Services Rules as applicable to the State of Haryana. In this connection he has relied upon a decision of this Court in ***Shiv Kumar Goel Vs. State of Haryana and another, 2007 (1) PLR 190*** wherein a Division Bench held as follows :-

"7. When the facts of the present case are examined in the light of the principle laid down in the aforementioned Rule it transpires that the petitioner was subjected to a criminal trial by registration of FIR No.242 dated 12.7.1996 under the provisions of Prevention of Corruption Act, 1988 registered at P.S. Gohana. He was acquitted on merit for lack of evidence as substantive attributes of Section 7 of the Prevention of Corruption Act, 1988, remain unsatisfied and no evidence connecting the petitioner to the crime could

be produced by the prosecution. Accordingly, a judgment of acquittal was recorded in his favour by learned Special Judge on 24.1.2002 (Annexure P3). In the meanwhile after the judgment of acquittal the services of the petitioner were retrenched on 30.6.2002. Despite the issuance of charge sheet dated 24.10.2002 (Annexure P7) and the reply of the petitioner dated 28.10.2002 (Annexure P8), the Managing Director of the Corporation has passed an order against the petitioner by treating the period of suspension as a non-duty period without giving him any benefit except the payment of subsistence allowance. The petitioner has also been given warning. According to the principle laid down in Rule 2.2 of Ibid rules, the disciplinary authority could not have initiated disciplinary proceedings against the petitioner. In any case, attempt made by the punishing authority to proceed against the petitioner by issuing him charge sheet was virtually abandoned yet order of punishment dated 20.11.2002 was passed. It is well settled that once the departmental proceedings for imposition of major penalty had been initiated against a delinquent employee then even for imposing a minor penalty like warning etc. regular departmental proceedings are required to be initiated. In that regard, reliance may be placed on a Full Bench judgment of this Court in the case of "K.G.Tiwari v. State of Haryana & Others" 2002(2) SCT 915 : 2002(4) SLR 329.

8. *Another reason which persuaded us to take the view that no enquiry could be held after the acquittal of the petitioner on merit by the criminal Court is that the charge sheet dated 24.10.2002 (Annexure P7) issued to the petitioner is based on the same facts and allegations which were the basis of criminal charge. Even the evidence which was likely to be produced in the departmental proceedings was similar. It was in these circumstances that the Supreme Court in the case of "G.M.Tank v. State of Gujarat" 2006 (3) RCR (Crl.) 251: 2006(3) SCT 252 (SC) : (2006)5 SCC 446 has held that no enquiry after the acquittal of the petitioner in criminal trial would be permissible. Therefore, the order dated 20.11.2002 (Annexure P1) passed by the Managing Director cannot be sustained in the eyes of law.*
9. *There is another aspect of the matter. In the Punjab Civil Services Rules Volume-I (as applicable to Haryana) Chapter VII has been incorporated which deals with amongst other things the subject of suspension. Rule 7.3 lays down a comprehensive procedure for coming to a conclusion as to how the*

period of suspension is to be treated. The aforementioned Rule was subject matter of consideration by Hon'ble the Supreme Court in the case of "B.D.Gupta v. State of Haryana" (1973)3 SCC 149. It was held that if an order adversely affects financially then even minor penalty has to be passed after objective assessment of all relevant facts and circumstances. The aggrieved employee is required to be granted a full opportunity of hearing by issuing show cause notice. In the present case, there is no show cause notice issued to the petitioner on the subject of treatment of his period of suspension. Even on that account, the order dated 20.11.2002 (Annexure P1) is liable to be set-aside."

Learned counsel for the petitioner has also relied upon

Dr.M.L.Kamra & others Vs. State of Haryana & others, 2009(6) SLR

577, wherein a Division Bench of this Court has held as follows :-

"5. The combined reading of these provisions would show that the justification for payment of pay and allowances would primarily depend upon the outcome of the inquiry which is held, for which the government employee is placed under suspension. If the consequential effect of the rule is seen operating harshly than the punishment awarded, then the same can certainly be termed unfair and unjust. In this background, a view is possible that it would not be fair, just and equitable to forfeit the pay and allowances of person, who was left with the award of warning only. The reason disclosed in the order to justify denial of full pay and allowances is that the petitioners were awarded warning. This reason alone to justify denial of full pay and allowances may indicate non application of mind. Rule 7.3 of Rules referred to above shows that the competent authority while passing the order was to see if the suspension was wholly unjustified. If the case is considered fit enough to be disposed of by award of warning then it can be said that there was hardly any requirement to place the petitioners under suspension. It is thus possible to say that the suspension was unjustified. As per the rule, competent authority is called upon to conclude that the suspension of the said servant was not wholly unjustified. The impugned order does not give any indication if this aspect of the rule was taken into consideration. This aspect of consideration is wholly absent. This order, even otherwise, would be much more damaging than the order of punishment. The impugned order thus cannot be sustained. The same is set aside. The petitioners

would be entitled to full pay and allowances for the period they had remained under suspension.”

In the circumstances petition is allowed. The chargesheet Annexure P-1 is quashed and impugned orders Annexures P-5 and P-6 are set aside. Consequently it is directed that the suspension of the petitioner be treated as period on duty. The petitioner is entitled to full pay and allowances for the said period. The same be worked out and released to the petitioner within a period of three months from the date of receipt of a certified copy of this order. It is made clear that if any due benefit is not granted to the petitioner, he would be entitled to claim the same with interest at the rate of 8% p.a. from the date/s the amount/s fell due till the date of payment.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

23.07.2015

Pooja Sharma-I

**(AJAY TEWARI)
JUDGE**