

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.13165 of 2011

Date of decision: 13.08.2015

Rajinder Kumar

... Petitioner

Versus

The Municipal Corporation and another

... Respondents

CORAM: HON'BLE MR.JUSTICE AMOL RATTAN SINGH

Present: Mr.K.G.Chaudhary, Advocate,
for the petitioner.

Mr.Harsh Aggarwal, Advocate,
for the respondents.

AMOL RATTAN SINGH, J.

The petitioner seeks quashing of the order dated 18.05.2011, passed by the Commissioner of the respondent-Corporation, whereby the petitioner has been inflicted a punishment of stoppage of one annual increment with permanent effect and the period during which his service was ordered to be suspended, has been ordered to be treated as leave of the kind due to him.

2. Briefly, the background to the above order is that initially an FIR was registered against the petitioner for the alleged commission of offences punishable under Sections 408, 468 and 471 of the IPC, in July 2003, on account of the fact that while the petitioner was working as an Octroi Moharrar with the Corporation, a receipt of goods purchased was shown to have been issued by the seller for a sum of Rs.40,099/-, whereas

actually it was found that the goods in respect of which receipt had been issued were only for a sum of Rs.99/-. Hence, the charge initially against the petitioner was actually that he had forged this receipt/interpolated it by adding Rs.40,000/- to the sum of Rs.99/- (by writing 400 immediately before 99).

The said receipt was dated 31.05.2003 and upon discovery of the forgery, the service of the petitioner was suspended, vide order dated 25.06.2003.

3. He was issued a charge-sheet but eventually it was found that the actual forgery had been committed by some person(s) who was/were not municipal employees and as such, the petitioner was not responsible for the forgery.

However, he was held guilty for negligence in not verifying the receipt against the actual goods received, in respect of which the receipt had been issued and consequently, the aforesaid punishment was imposed upon him.

(He was also acquitted by the trial Court in the criminal case registered against him).

These facts are not disputed in the written statement filed by the respondent-Corporation.

4. Mr.Chaudhary, learned counsel for the petitioner, submitted that the forgery not having been proved against the petitioner and, in fact, it having been proved that it was miscreants, either of the truck union or otherwise, who had actually committed the forgery, even the charge of negligence against the petitioner was not sustainable, as the receipt in question had only passed through the hands of the petitioner as a normal

routine.

He further submitted that, in any case, the amount of Rs.40,000/- had already been deposited by the tempo union with the Company that had issued the receipt and as such, there was no loss caused to the Corporation.

5. Mr.Chaudhary further submitted that even treating the period of suspension of the petitioner from 25.06.2003 to 11.09.2007, as period of leave of the kind due, eventually resulted in a punishment higher than was awarded to him, because any period of extraordinary leave would not be countable towards the petitioners' pension etc.

He relied upon two judgments of a Division Bench of this Court in Mathura Dass Gupta v. Superintending Engineer (2008)(3) RSJ 251 and Poonam Rani v. Uttar Haryana Bijli Vitran Nigam Ltd. (2008) (2) RSJ 205, in support of his arguments.

6. Mr.Aggarwal, learned counsel for the Corporation, however, submitted that the petitioner not having verified the goods against the receipt, the punishment awarded is a very minor punishment.

Learned counsel also submitted that in any case, a remedy of appeal against the impugned order is available to the petitioner.

As regards the period of suspension, he submitted that since the petitioner was placed under suspension on a very serious charge, though only a lesser charge was proved against him, yet he was not exonerated in the disciplinary proceedings and as such, the period of suspension cannot be treated as period spent on duty.

7. Having heard learned counsel for the parties, I find no error in the impugned order, inasmuch as, the petitioner has been found guilty, after

due enquiry, of negligence, and as such, the punishment imposed, even though it is a stoppage of a single increment, but with cumulative effect, is not in any manner disproportionate to the charge proved against him.

As such, unless the punishment is found to be completely disproportionate and arbitrary, this Court would not interfere with the quantum of punishment awarded by a competent authority.

8. As regards the judgments cited by Mr. Chaudhary, *Mathura Dass Guptas' case* (supra), was one where the petitioner therein had been dismissed from service on account of his conviction for an offence punishable under the Prevention of Corruption Act, which conviction was set aside in appeal.

Not having been given his retirement benefits, he had filed a writ petition, in which it was held that once the basis for his dismissal had been removed, by setting aside his conviction in the criminal case, all consequential benefits of service would flow to the employee.

No departmental proceedings have been referred to at all in that case, because there were obviously none, and his dismissal was only on account of the criminal case registered against him. Thus, the ratio of that judgment cannot apply to the petitioner in the present case, he having been found guilty of negligence in departmental proceedings.

9. As regards *Poonan Ranis' case* (supra), the petitioner in that case was acquitted in the criminal prosecution and was also exonerated in the departmental enquiry. However, his period of suspension from service was still treated as one having been spent on leave of the kind due to him. In those circumstances, it was held by the Division Bench that once the petitioner was wholly exonerated of all charges, even in the departmental

proceedings, the period during which his service remained suspended, could not be used to his detriment in any manner and as such, it would have to be treated as period spent on duty.

Obviously, again, that case has no bearing on the present one, the petitioner in the present case not having been fully exonerated.

10. Keeping in view the above, I find no merit in the present writ petition, which is dismissed. However, if the remedy of appeal is available to the petitioner, and he avails of it, the appellate authority would obviously be within its jurisdiction to either award a lesser punishment, or to otherwise consider the appeal, as per law.

13.08.2015

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(AMOL RATTAN SINGH)
JUDGE