

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10602 of 2015

DATE OF DECISION: AUGUST 10, 2015

D.C.GOYAL

...PETITIONER

VERSUS

UNION OF INIDA & OTHERS

...RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE M. JEYAPPAUL.
HON'BLE MR. JUSTICE DARSHAN SINGH.**

1. Whether the judgement should be reported in the digest? Yes

PRESENT: MR. GURMEET SINGH BAJWA, ADVOCATE
FOR THE PETITIONER.

M. JEYAPPAUL, J.

1. Invoking Articles 226 and 227 of the Constitution of India, the writ petitioner has challenged dismissal of the Application filed by the petitioner to set aside the order of punishment passed by the respondents. It is to be noted that his application in M.A. No.80 of 2011 praying for condonation of 476 days in filing the Original Application before the Central Administrative Tribunal, Chandigarh Bench was also dismissed.

2. The writ petitioner filed M.A. No.80 of 2011 seeking condonation of delay of 476 days in filing the Original Application before the Central Administrative Tribunal, Chandigarh Bench. He pleaded that he submitted a representation on 29.9.2006 to the appointing Authority raising certain legal issues qua the impugned order. Annual increments were granted on 1.1.2007 and 1.1.2008 respectively, despite the order of punishment already imposed on him. Further, he was also making an

attempt to raise an industrial dispute with respect to stoppage of three increments with cumulative effect through SCL (Semi Conductor Laboratory) Employees Union. Therefore, the delay of 476 days has occasioned, it has been contended by the writ petitioner.

3. The writ petitioner also contended on merits that he was suffering from medical problem for which he was getting treatment from PGI. He had assured the respondents that he would improve his productivity. Therefore, the charge that he gave less work output which was less than 50% as compared to the other technicians is totally unsustainable.

4. The respondents contended that show cause notice was issued to the writ petitioner on 6.5.2005, as he gave less work output which was less than 50% as compared to the other technicians. The report submitted by Medical Board would go to show that the writ petitioner could discharge his duty as a normal person. The writ petitioner remained ex-parte during the enquiry proceedings. He responded only to the 2nd show cause notice calling upon him to answer for proposed punishment of stoppage of three increments with cumulative effect. The punishment was properly accorded. The delay in implementation of the order cannot be a ground to condone the delay of 476 days in filing the Original Application, it was contended.

5. The Central Administrative Tribunal, Chandigarh Bench, chose to dismiss the application praying for condonation of delay of 476 days on the ground that sufficient reason was not assigned for not preferring the application on time. The Tribunal also held that the enquiry proceedings had been conducted by the respondents only in accordance with the

procedure known to law. The writ petitioner also had ample opportunity to defend himself. The punishment was awarded only after adhering to all the procedures. Ultimately, the plea for setting aside the order passed by the respondents did not find favour with the Tribunal.

6. It was contended by learned counsel appearing for the writ petitioner that there was a delay in implementation of the order of punishment by the respondents. The writ petitioner also submitted a communication to the appointing Authority, but no reply to the representation was ever received by the writ petitioner. He was also making an attempt to raise an industrial dispute before the Labour Court through the union. For all these reasons, there had been a delay of 476 days. Unfortunately, the Tribunal had not dealt with those reasons assigned. It is further contended by the learned counsel appearing for the writ petitioner that 3rd respondent was not the appointing Authority and therefore, he should not have passed the impugned order.

7. The gravamen of the charge is that the writ petitioner gave less work output which was less than 50% as compared to the other technicians performing the same job. The enquiry officer proceeded to conduct the enquiry in absentia of the writ petitioner as the latter had not turned up to participate in the enquiry proceedings on receipt of notice. In other words, due opportunity was afforded to the writ petitioner to participate and defend himself as against the charge formulated against him. But unfortunately, he having received the notice chose not to defend himself.

8. After issuing second show cause notice, the disciplinary

Authority imposed punishment of stoppage of three increments with cumulative effect. The disciplinary Authority also imposed punishment only after giving due opportunity to the writ petitioner. The Medical Board has also given an adverse report as regards the plea of medical inability to cope with the work assigned to him set up by the writ petitioner. Therefore, in our considered view, the respondents have acted only in accordance with the principles of law and procedure. On merit, therefore, the plea of the writ petitioner does not survive.

9. As per the Industrial Employment (Standing Order) Act, the Manager/Management is the appointing Authority. The term 'Manager' shall also include 'Acting Manager' when the Manager is absent, provided he is fully authorized to act as such by the Managing Director. The Managing Director also can delegate powers of Manager to any other officer to the extent as may be specified in the orders.

10. In the instant case, the 3rd respondent was none other than the Deputy Chief Manager. He having occupied the managerial post became an appointing Authority as per the above Standing Order. Therefore, he is entitled to conduct disciplinary proceedings and pass an order of punishment.

11. Coming to the whopping delay of 476 days in presenting the Original Application, we are of the view that the writ petitioner has come out with lame excuses for not preferring the application in time before the Tribunal. The final order was served upon him. But quite unfortunately, he had not come forward with the Application in time before the Tribunal.

That he was under the impression that the order of punishment was withdrawn as subsequent increments had been sanctioned to him and that he had been canvassing the Union to raise an industrial dispute before the Labour Court are found to be invented reasons to suit his fervent plea for condonation of delay.

12. For all these reasons, we are of the considered view that no case for judicial review is made out by the writ petitioner to interfere with the impugned order passed by the Tribunal. The writ petition fails and it stands dismissed.

(M. JEYAPPAUL)
JUDGE

August 10, 2015
Gulati

(DARSHAN SINGH)
JUDGE