

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

Civil Writ Petition No.14870 of 2013
Date of Decision: July 03, 2015

C.R.Yadav

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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?

Present: Mr.D.S.Patwalia, Senior Advocate with
Mr.Bikramjit S. Patwalia, Advocate,
for the petitioner.

Mr.Hitesh Pandit, Addl.A.G.Haryana,
for the State.

Mr.Raman B. Garg, Advocate,
for respondent No.3.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the order dated 20.6.2013 (Annexure P-14), whereby after a delay of four years of culmination of the enquiry proceedings in the year 2009, punishment of 10% cut in the pension has been imposed and a sum of ₹61,810/- has been ordered to be recovered.

Mr.D.S.Patwalia, learned Senior Counsel assisted by Mr.Bikramjit S. Patwalia Advocate submits that the alleged incident, as per the list of allegations, was of 10.1.2000, whereas the petitioner retired on

31.5.2000 and he remained posted as Estate Officer only for a period of two months, i.e., from 1.11.1999 to 10.1.2000. A charge sheet dated 18.12.2003 was served upon the petitioner containing the following list of allegations:-

“i)	Loss to HUDA on account of transfer fee (Area of plot rate/ sqm) 215x50.	Rs.10750/-
ii)	Loss to HUDA on account of Administrative charges (Rs.5000/- for Ist time and Rs.5000/- for 2 nd time)	Rs.10000/-
iii)	Loss on account of non execution of conveyance deed.	Rs.7675/-
iv)	Loss due to non execution of sale deed.	Rs.47895/-
v)	Loss on account of non charging of 5 years Extension fee.	Rs.47300/-
	Total	Rs.1,23,620/-.”

The petitioner submitted reply to the charge sheet and the enquiry proceedings culminated on 18.5.2009 and thereafter the petitioner was served a show cause notice by the Disciplinary Authority for imposition of penalty, which is stated to have been replied vide Annexure P-13 dated 12.6.2009. Thereafter the Disciplinary Authority sat over the matter and did not take action and subsequently woke up in the year 2003 and a personal hearing was afforded to the petitioner on 14.1.2013, thereafter, vide impugned order, the punishment, aforementioned, has been imposed upon the petitioner.

Mr.Patwalia, in support of the aforementioned facts, has raised the following submissions:-

- i) The charge-sheet was served on the petitioner almost close to four years from the date of the alleged incident;
- ii) Nothing has been recorded by the Enquiry Officer that the petitioner was responsible in causing the delay in the enquiry and the Enquiry Officer has taken almost six years in concluding the same;
- iii) Despite having replied to the show cause notice served upon the petitioner with regard to the proposed punishment, the Disciplinary Authority did not take any action for almost four years and the impugned order has been passed on 20.6.2013 (Annexure P-14).

In support of the aforementioned contentions, he has relied upon the Division Bench judgment rendered in **Union of India and another Versus M.C.Ralh and another, 2009(4) S.C.T. 779** to contend that delay in concluding disciplinary proceedings would not, *ipso-facto*, be a ground for quashing of the charges and subsequent proceedings, but the prejudice caused to the delinquent employee on account of such delay is an essential indicator.

Mr.Hitesh Pandit, learned Additional Advocate General, Haryana appearing on behalf of the State submits that the petitioner, while posted as Estate Officer for a period of two months, did not charge the transfer fee for allowing the allottee to induct partner having 51% majority, which is against the policy and, therefore, it has caused a loss of ₹10750/- to the HUDA. Similarly, the administrative charges of ₹5,000/- each for the 1st and 2nd time, amounting to ₹10,000/- has not been charged from the allottee.

Even the loss on account of non-execution of conveyance deed/sale deed and non-charging of 5 years extension fee has also been caused and, thus, substantial loss has been caused to the HUDA and, therefore, the order for imposition of cut of 10% in the pension and recovery of the aforementioned amount has been rightly passed.

On going through the contents of the written statement, there is no explanation, much less, reasonable explanation for explaining the delay of four years in not taking action after the culmination of the enquiry proceedings way back on 18.5.2009 and vis-a-vis the serving of the charge sheet close to four years, i.e., on 18.12.2003, whereas the petitioner had retired on 31.5.2000,, much less, no delay has been attributed to the petitioner in culmination of the enquiry proceedings.

I have heard the learned counsel for the parties and appraised the paper book.

The admitted facts on record are that the petitioner had retired on 30.5.2000, whereas the charge sheet had been served on 18.12.2003 almost near/close to four years. The Enquiry Officer has not attributed any role of delay being caused by the petitioner in culmination or in the process of holding the enquiry. The Enquiry Officer had only proved the 1st and 2nd charges, ibid, and with regard to the rest of the charges, it was held that the same would be decided along with other person. However, stand taken in the written statement is not only vague, but specific denial is absent with regard to the outcome of the said enquiry and even the impugned order does not mention about the same. The petitioner, in response to the show cause notice dated 18.5.2009 (Annexure P-12) had submitted reply promptly on

12.6.2009 (Annexure P-13), but thereafter the Disciplinary Authority remained completely silent and did not take any action for almost four years. Such an act of the Disciplinary Authority kept a sword hanging on the head of the petitioner as he did not know the outcome of his reply and perhaps was under the impression that the reply submitted by him was sufficient and satisfied the charges and proposed action of punishment was dropped. The petitioner, on receipt of notice of personal hearing, in the month of January, 2013, was flabbergasted with regard to the act and conduct of the Disciplinary Authority in raking up the matter after a lapse of four years. The aforementioned delay has not been explained. The Disciplinary Authority/ Enquiry Officer was required to take action promptly and to conclude the enquiry until and unless some role of delay is attributed to the delinquent employee. In the instant case, the authorities have taken the matter in a most casual, callous and tardy manner.

The Hon'ble Supreme Court in **State of Punjab Versus Chaman Lal Goyal**, 1995 (2) SCT 343, while dealing with a question of initiation of enquiry after lapse of considerable time, has laid down a law that the disciplinary proceedings cannot be questioned after lapse of considerable time. In the instant case, the charge sheet was submitted after almost close to four years, for which there is no explanation. The Court cannot remain oblivious to such an act of the authorities and has to strike balance vis-a-vis the prejudice caused to the delinquent employee, particularly in respect of a matter where the petitioner has remained posted as Estate Officer for a period of two months.

Though Mr.Patwalia has raised issue with regard to the

observations given by the Enquiry Officer and as well as the merits and demerits of the allegations, I do not intend to go into the depth of the charges levelled against the petitioner, but decide the matter only on the question of manner and the delay caused in serving the charge sheet, conclusion of the charge sheet, continuation of the charge proceedings for a period of six years and thereafter imposition of punishment after period of four years. In essence, the petitioner has faced the agony of almost ten years and 13 years after superannuation. Such act of the respondents has caused prejudice to the delinquent employee, which is an essential indicator for exercising the judicial view under Article 226 of the Constitution of India. It is not the case of the Department that the delinquent employee has contributed to the delay in concluding the proceedings. The authorities have failed to give explanation with regard to the delay.

Accordingly, the impugned order of imposition of 10% cut in the pension and recovery of ₹61,810/- is not sustainable in the eyes of law and is hereby quashed. Resultantly, the writ petition is allowed.

July 03, 2015
ramesh

(AMIT RAWAL)
JUDGE