

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20977 of 2012 (O&M)

Date of Decision: 31.10.2015

Jaswinder Kaur

... Petitioner

Versus

The State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K. Arora, Advocate,
for the petitioner.

Mr. Inqulab Nagpal, AAG, Punjab.

1. To be referred to the Reporters or not? Yes.
2. Whether the judgment should be reported in the Digest? Yes.

RAJIV NARAIN RAINA, J.

1. Challenge in this petition is to, (i) the charge-sheet dated December 16, 2009 (P-2), (ii) the inquiry proceedings which have culminated in the report dated July 04, 2011, and, (iii) the impugned punishment order of dismissal from service dated November 29, 2011. The statutory appeal against the punishment order has been dismissed vide order dated July 19, 2012 (P-22). The action has been taken under the provisions of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 ("1970 Rules"). The fourth impugned order is the one passed in appeal.

2. The star contention is that the charge-sheet issued under Rule 8 of the 1970 Rules is vague. If the charges of major misconduct are vague, they must ex facie appear to be so, and what would do better than to read them as

framed against the delinquent-petitioner. They read as follows:-

"Smt. Jaswinder Kaur, Steno-typist was transferred by the department vide office order endst. No.DYS(S4)09/4422-31 dated 31/8/09, but the employee sent medical leave.

(i) The service record of the employee is very bad. The employee always remains absent from office. In this regard, explanations of the employee are being sought.

(ii) Violation of the orders of higher authorities.

(iii) On 16.09.09, the employee got threatens the Director, Youth Services, Punjab from some unknown person for cancellation of her transfer.

(iv) Improper maintenance of office record.

(v) The employee did not perform her duties properly in the 14th National Youth Festival – 2009 which was held at Amritsar from 12.01.09 to 16.01.09.

(vi) The employee sent medical leave up to 20/11/09. Thereafter, her medical leave was not received.

(vii) The employee was relieved on 16.11.09 A.N. by the Assistant Director, Youth Services, Ludhiana vide his letter No.ASYS/L/09/ 450-451 dated 16/11/09 to enable her to report at her place of posting. But neither the employee submitted her joining report at her place of posting nor she sent any information to the Head Office regarding her joining report and nor any telegram/application for leave was received from her. It is clear from the above that the employee remained absent from 21.11.2009 without any intimation."

3. These sundry allegations of misconduct are labelled under the misleading title "Detail of Charges" which are, without saying, shorn of material particulars are supposed to be read as the imputations of misconduct allegedly committed by the petitioner. All of them, to say the least, are extremely vague and without definition or details to enable the petitioner to answer. There is no gainsaying that in law, if the imputations are defined with sufficient precision then the employee is not prejudiced as he or she would know what they are up against armed with prior knowledge

of the incidents which fall short of expected behaviour at the workplace. They would then be in a position to accordingly make their defence. Even a cursory reading of the five charges, and the imputations therein leave to the mind of the court no manner of doubt that the imputations of misconduct have not been defined with any precision, leave alone sufficient precision. A charge must be clearly defined upon which a domestic inquiry is based. The rule is one of fair warning for a delinquent to make answer and to prove innocence of the charge. Vagueness in charge-sheets plants booby traps in the way of the delinquent of a fair trial. Element of surprise is the antithesis of law and justice, the results of which can be fought with grave danger, arbitrariness and "discriminatory application" of facts. See **Richard Grayned vs. City of Rockford**, 408 US 104 (1972) where the Supreme Court of United States of America in para.11 ruled; "uncertain meanings inevitably lead citizens to 'steer far wider of the unlawful zone' ... than if the boundaries of the forbidden areas were clearly marked". In **Kartar Singh vs. State of Punjab**, (1994) 3 SCC 569 the Supreme Court applied the law in *Richard Grayned* and rephrased the dicta of the US Supreme Court to suit Indian conditions observing as follows:-

"More so uncertain and undefined words deployed inevitably lead citizens to 'steer far wider of unlawful zone' ... than if the boundaries of the forbidden areas were clearly marked".

4. It would be apt to reproduce para.11 of *Richard Grayned* though they may have no direct connection with this case but broadly can be applied on the over-arching principle explained:-

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. First, because we

assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute 'abut(s) upon sensitive areas of basic First Amendment freedoms', it 'operates to inhibit the exercise of (those) freedoms.' Uncertain meanings inevitably lead citizens to "steer far wider of the unlawful zone"...than if the boundaries of the forbidden areas were clearly marked."

5. This Court would remind itself that the above words were spoken in a different clime in the context of the criminal law but would have a broad application in departmental proceedings in India since they are penal in nature and consequences and especially when the dispensation by the Administrator results in imposable penalties of the severest kind, that is, of dismissal from service. If the charges are vague then prejudice is *per se* caused to the defence which prejudice is writ large on record and may result in vitiating the further proceedings.

6. Appearing for the petitioner, Mr. Arora draws attention of the Court to the five 'List of Charges', which form the foundation of issuance of the memorandum of charges in docket form and would need to be reproduced to look at the vagueness in them while read with the articles of charge. To wit:-

"1. Non-submission of joining report at the place of her posting due to transfer from Ludhiana to Patiala vide this office order endst. No.DYS(S4)/09/4422-31 dated 31/8/09.

2. Non-submission of joining report at the place of posting after relieving on 16.11.09.

3. Regarding absent from duties w.e.f. 20/11/2009.

4. Not getting medical examination from Civil Surgeon, Ludhiana.

5. Not doing office work as per rules."

7. The factual position emanating with respect to the first charge covers a period of four days and so also for the second charge. As far as 3rd charge is concerned regarding absence from duties w.e.f. November 20, 2009 the charge framed does not even mention the date of joining which was November 26, 2009. From the detail of charges at Sr. No.(vi) above it is thence revealed that the petitioner had sent application for medical leave up to November 20, 2009 which she overstayed by six days. The absence is from November 21, 2009 to November 25, 2009. Even if this amounts to misconduct, they are of not such a nature as might invite dismissal from service. It could not be better put than to say that the punishment must fit the crime, and crime the punishment. There are a list of five charges and seven imputations of misconduct. However, in the inquiry report, the five charges have been proliferated to nine. The "conclusions" part in the inquiry report conducted by the Inquiry Officer-cum-Assistant Director, Youth Services, Bathinda read:-

"Inquiry Report: *From the perusal of the record submitted by the Presenting Officer, it is seen that the service record of the official is very bad. The official is habitual of remaining absent from the office, coming late to the office, do not obey orders of her senior officers and also for demanding of leave again and again without any reason. The official has herself*

concluded the facts of the inquiry in the end of her statement by stating that it is clear from all the facts mentioned above that all the charges levelled against her in the charge sheet are wrong, without any record and without any reality. These were levelled by the Department at their own level whereas no complaint had been made by any of the officer with whom she has worked. All these charges have been levelled against her to harass her knowingly and to spoil his record. It is clear from the above that the official has no knowledge of official work and rules. The Enquiry report and attendance report of that day is attached. (Copy of letter is enclosed at Annexure-51).

Conclusion of the Inquiry: *With regard to all the charges mentioned above, I have come to this conclusion that the official is delinquent. The statements made by her are not correct as per record. Two inquiries have been made earlier against her. This official has agreed in her own statements. The official in her letter No. Spl. 12 dated 28.10.2010 written to Director, Youth Services, Punjab has stated that the charges levelled against her are not so serious due to which she has been charge sheeted under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. The official did not raise this point at that time when a charge sheet was served upon her through Director, Youth Services, Punjab vide Memorandum No.DYS(S4)2009/6677 dated 16.12.2009. During the inquiry, when she was asked about this, she stated that she may only be asked the questions relating to the charge sheet. The official submitted her reply to the charge sheet vide letter No. Spl. /7 dated 12.5.2010. The official had to submit her written reply within 21 days whereas she submitted the reply about after 5 months. It is apparent from this that how seriously she takes the charge sheet. From the perusal of the record of the official, it can be adjudged that perhaps she did not take her job seriously. Therefore, wherever she has worked in any of the District, the officers of that office gave her warning so many times for remaining absent from the office, for demanding leave again and again and also issued show-cause-notice for dereliction of duty in office work. Earlier also after issuing a charge sheet to the official an inquiry has been*

made by the Department. The letters relating to this point have been mentioned in Charge No.2 from Sr. No. 1 to 21. It is apparent from the above that the official has been found guilty of the charges levelled in the charge sheet."

8. The inquiry report is replete with generalizations. Many irrelevant considerations seem apparently to have played their part into the report which is foreign to the charges levelled. Not only this, the inquiry report and the dismissal order refer to two earlier charge-sheets which resulted in major punishments inflicted on the petitioner in the past against which the employee is said to have succumbed by not raising any objection at that relevant time. A perusal of the dismissal order reveals absence of any discussion on the evidence used against the petitioner. The dismissal order is equally vague as the charge-sheet. There is also no worthwhile discussion on choice of punishment inflicted from the ones available in the 1970 Rules. When clear findings have not been returned on each of the charges the order is difficult to sustain. A person of ordinary intelligence might fail to understand which of the charges have been proven on which evidence. Is is thus the punishment order dated November 29, 2011 appears to be as laboured as it is cryptic and imprecise in its findings of guilt. The punishment is in the main highly disproportionate and excessive to the cause espoused by the five articles of charge.

9. Nevertheless, in her appeal to the Secretary, Government of Punjab in the Department of Sports & Youth Services, Chandigarh against the dismissal order the petitioner revealed many telling facts of how she has been wronged by the vague charge-sheet and its terrible aftermath. She explained that the then Director, Youth Services bore a grudge against her

while she was posted at Ludhiana. One Lajpal Singh Bains is the brother of the Director and was intermeddling in the affairs of the office. On this extra legal interference, the then Assistant Director, Youth Services, Ludhiana made a complaint against Lajpal Singh Bains on June 12, 2009. The Director, Youth Services was under the impression that the petitioner had a hand in the making of the complaint. She explained that she had availed medical leave from September 25, 2009 to November 25, 2009 due to her illness. She was transferred from Ludhiana to Patiala while she was on medical leave under orders of the Director dated August 31, 2009. She was relieved from Ludhiana on November 16, 2009 while she was on medical leave. There were holidays on November 21, 2009 and November 22, 2009 being Saturday and Sunday. The order was received through office Peon on November 23, 2009 and she joined at Patiala on November 26, 2009 on transfer after availing two days joining time available as per Rule 9.5 of the PCS Rules, Volume-1 Part-1.

10. On the issue of medical examination, she stated that she was asked to get herself medically examined by the Civil Surgeon, Ludhiana and the letter was received by her on November 10, 2009 through office Peon. The Medical Board situated by the Civil Surgeon, Ludhiana worked for two days in a week on Tuesday and Thursday. She appeared before the Medical Board for a medical check up on November 12, 2009 but for some reason the Board did not meet. Similarly, the Board did not meet on November 17, 2009. Finally, she appeared before the Board on November 19, 2009 and the Civil Surgeon, Ludhiana in the report dated November 20, 2009 certified that Ortho specialist conducted the medical examination and showed his

inability to form any opinion about past illness but 'now' she is fit to resume duty. She produced OPD Slip dated November 20, 2009 and medical certificate issued by the Civil Surgeon, Ludhiana. She stated that she had a spinal problem. She explained that she was not absent from duty on November 20, 2009 as she was on medical leave. She stated that she was not supplied any list of witnesses along with charge-sheet issued under Rule 8 (3) of the 1970 Rules through whom the charges were to be proved. She stated that no witness was produced against her as per rules due to which no cross-examination could take place. The Presenting Officer was not appointed as per rules. The Inquiry Officer himself performed the duty of Presenting Officer and submitted his report on his own. Therefore, the charge-sheet dated December 16, 2009 deserves to be treated as void. She complained that the inquiry was not conducted on charge at Sr. No.3. She brought to the notice of the Secretary in her appeal that no adverse remarks had been recorded against her by any officer thus far. She obtained copies of her ACRs for the years 2000-01 to 2009-10 under the Right to Information Act, 2005. She incorporated a table of those ACRs in her grounds of appeal. Her grading for the aforesaid period had two "Good", five "Very Good" and three "Outstanding" entries. She was assessed as "Very Good" during the period 2008-09 and 2009-10, the period the charges relate to. It is, therefore, not possible to conclude that her service record was adverse for the entire period 2000 to 2010. She complained that the charge-sheet was vague and, therefore, the charges cannot be said to be proven as to what misconduct she committed against the Department. In absence of cogent proof of misconduct, the dismissal order was bad. However, the appeal was

mechanically rejected by the competent authority affirming the dismissal order.

11. Mr. Arora points out to the fact that the petitioner had approached this Court in CWP No.21196 of 2010 praying for quashing of the instant charge-sheet dated December 16, 2009 as well as the orders declining request of the petitioner for change of the Inquiry Officer who appeared to her biased. However, during the pendency of the writ petition, the inquiry was concluded and the petitioner was dismissed from service. The dismissal order was appealable under the Rules, 1970. Therefore, the petition was disposed of with liberty to the petitioner to file departmental appeal against the order of dismissal by taking all pleas which were raised in the petition before the appellate authority. Consequently, this Court by the order dated January 24, 2012 disposed of the petition with a direction to the appellate authority to offer personal hearing to the petitioner, directing the appeal to be decided within four months from the date of presentation of the appeal. The rejection of the appeal has given rise to the present writ petition.

12. On notice, the respondents put in appearance and have contested the case by filing their written statement. In the written statement filed by respondents No.1 and 3 by way of affidavit of the then Director, Youth Services, Punjab, Chandigarh it is pointed out that the petitioner was habitual of remaining absent from duty and to prove this, a table has been placed in para.1 of the preliminary submissions mentioning the periods of absence. It is averred that she did not take her job seriously and warnings had been issued by her senior officers repeatedly in almost all the Districts wherever the petitioner served by either remaining absent from the office or

by demanding leave from time to time. The written statement refers to earlier charge-sheets dated April 07, 1997, November 29, 1999, March 13, 2008 and the current one of December 16, 2009. These charge-sheets are for willful absence for short periods of a single or few days or some months (November 13, 1996 to February 16, 1997, February 18, 1997 to April 16, 1997 and August 03, 1999 to February 03, 2000) which occasioned infliction of major penalties on the petitioner. What is portrayed in the reply is a litany of successive defaults and the cumulative effect of which has resulted in the order of dismissal.

13. The petitioner had filed a replication to the written statement controverting or explaining the contents of the pleadings. The petitioner submits that past conduct was not relevant to the present charge-sheet nor could such old material be used against her to award her punishment of dismissal from service without fair warning that that material would be also used against her in the package of amalgamated punishment contrary to the rule against double jeopardy. She reiterated that no prosecution witness was examined against her and she was directed to disprove the charges in the circumstances which caused serious prejudice to her rights in defence of action taken. Furthermore, the Inquiry Officer was enjoined by law to give separate findings on each charge but no such findings have been recorded on each charge which makes the effort void and *non est* against the petitioner. No legal evidence was adduced on record, nor were the incriminating documents produced on record in support of the charges and the petitioner was denied opportunity to cross-examine them, had they been produced, to dispel doubts and to elicit the truth. But there were no

witnesses produced much less to be admitted to cross-examination. The present was a case of no evidence from the side of the prosecution. The inquiry was a regular inquiry which had to be conducted in a fair and proper manner. The dismissal order is non-speaking and previous charge-sheets have been taken into consideration to visit the petitioner with the extreme punishment of dismissal from service. Her learned counsel argues that the inquiry was sham.

14. Moreover, the appellate authority, according to Mr. Arora, did not comply with the directions issued in CWP No.21196 of 2010, neither in letter nor in spirit. Besides, the appellate authority did not decide the appeal within the stipulated period and also did not offer personal hearing to the petitioner before passing the order dated July 19, 2012 which is thus liable to be set aside as it is not in conformity with the principles of natural justice. Her past service was not made a part of the charge memo and could not have been looked into to cause her double jeopardy by consolidating all of them in a single dismissal order. This action of the department is urged to be violative of the rule of law. Even her ACRs for the period after 2000 would not justify the dismissal order. In the replication she has repeated her allegations regarding the nexus between Bains and her sister who was the Director, Youth Services, Punjab in conduct of official matters relating to the department. There is no rebuttal of this averment on the present file by the Director. The petitioner pointed out as 'wrong and denied' that her entire record is available at Head Office. For conducting an inquiry the record of the petitioner is not to be seen, whereas, the record pertaining to the allegations in the charge-sheet is to be seen, which record was kept either at

Ludhiana or at Patiala. The Inquiry Officer was posted at Bathinda and was directed to conduct the inquiry at Chandigarh which itself speaks about the mala fides of respondent No.2. The request of the petitioner for change of Inquiry Officer was wrongly turned down.

15. On hearing counsel, and after giving due consideration to the points of view expressed by Mr. Arora and the learned State counsel, I have hardly any doubt left that grave prejudice was caused to the petitioner; firstly, from the vague charge-sheet issued without due application of mind and secondly, the proceedings got derailed and were thereafter wholly misdirected. It would neither be fair nor proper to rely on the inquiry report based on a vague charge-sheet and weak material and no probative evidence to support the charges which have neither flesh nor blood to sustain an order of dismissal from service and denial of pension.

16. The last opportunity for securing justice in the administration in the appeal was fractured by non-application of mind in the Secretary to Government of Punjab in the Department of Sports and Youth Services, Chandigarh. The past record is not of any major concern in reviewing the order of dismissal and the order declining the appeal. Neither could the Inquiry Officer nor the disciplinary authority travel beyond the charges framed. Inevitably, vague charges lead to vague results. There is sufficient evidence on record to show that serious prejudice was caused to the petitioner from the onset of the inquiry when the defective charge-sheet dated December 16, 2009 was issued. The Director, Youth Services more clearly than not appears to be biased and the bias runs to the written statement filed by her on behalf of the Government. As a matter of fact, the

Director, Youth Services, Punjab should not have filed the written statement appearing to defend her own actions and should have had the wisdom of leaving that work to be done by some other senior officer acquainted with the facts of the case who could take a dispassionate view of the record. In matters of inquiries, the written statement is not sufficient to conclude either way since the examination in certiorari is aimed at the record. If the record does not justify extreme punishment of dismissal on grounds of reasonableness, fair play and non-arbitrariness then the punishment appears to be highly excessive in its infliction and to the extent that it worries the conscience of the Court. Here the Wednesbury principles of arbitrariness and reasonableness can suitably be applied to fault the dismissal order and the appellate order as being *prima facie* unlawful, excessive, arbitrary and discriminatory within the meaning in Articles 14, 16 and the reasonable protections afforded to a permanent government servant under Article 311 of the Constitution of India and the 1970 rules. The work of the Inquiry Officer and the Director, Youth Services, Punjab appears mostly to be based on biased opinions but not the evidence on record weighed in the scales of justice.

17. It is well embedded in the law that a defective inquiry is no inquiry in the eyes of law. They both stand on the same footing. Still further, the explanations offered by the petitioner were not been properly dealt with or considered by any of the authorities concerned who inflicted and sustained the punishment. However bad may be the petitioner in the eyes of her superiors but she has her valuable rights of fair treatment, fair consideration and above all to be dealt with by fairness-in-action

proportionate to the cause.

18. As a result of the above discussion, this Court is left with little doubt and hardly any other option except to quash both the impugned orders of dismissal and the appellate order dismissing the appeal offhand without due and proper application of mind.

19. The petition is accepted. The petitioner is directed to be reinstated to service with all consequential benefits. However, the parties will bear their own costs of the litigation.

(RAJIV NARAIN RAINA)
JUDGE

31.10.2015
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