

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

CWP No. 250 of 2015 (O&M)

Date of decision: 8.1.2015

Shamsher Singh

...Petitioner

Versus

Punjab Agro Industries Corporation Limited and others

...Respondents

CORAM: Hon'ble Mr. Justice Mahesh Grover

Present: Mr. O.P.Kamboj, Advocate for the petitioner.

Mahesh Grover, J.(Oral)

The petitioner impugns orders (Annexures P-5 and P-6) by which a punishment of stoppage of two annual increments with cumulative effect as also recovery of ₹16,75,172/- has been imposed upon him after initially ascertaining the amount to be recovered as ₹17,68,172/-.

The petitioner who was working as a Plinth Incharge, faced a charge sheet issued to him vide Annexure P-1. The primary charge against him was of committing irregularity leading to a loss to the Corporation. His reply was solicited but he refused to submit any response. Thereafter enquiry was conducted against him in which the petitioner participated. The Enquiry Officer concluded that charge against the petitioner for having

committed irregularities stood duly established and ascertained the loss of ₹17,68,172/-. After following the procedure by giving notice to the petitioner to which he responded, the Disciplinary Authorities passes order Annexure P-5 upholding the findings of Enquiry Officer and inflicted punishment, the details of which have been noticed above.

In appeal the findings were affirmed and the amount of ₹17,68,172/- was reduced to ₹16,75,172/-.

Impugning the said orders, learned counsel for the petitioner on a particular reference to Annexure P-5, has stated that while imposing the punishment, the competent Authority took into consideration the comments of the Procurement Division, Recommendations of the Disciplinary Committee and report of the Enquiry Officer. His grievance is that even though he had participated in the enquiry proceedings yet insofar as the other material which was considered by the competent Authority i.e. the comments of the Procurement Division, Recommendations of the Disciplinary Committee are concerned, no opportunity was given to him by these two bodies while determining the allegations against him. On this count, he pleaded the principles of natural justice even grossly violated as the material which has been used against the petitioner was kept away from him. The petitioner has also referred to the standing orders of the Corporation where procedure for inflicting minor and major penalties has been prescribed. These relevant provisions are extracted herein below:

“24. Punishment for Misconduct:

(a) The following are the penalties which can be imposed on any employee found guilty of misconduct:-

Minor Penalties:

- (i) Warning
- (ii) Censure
- (iii) Fine (subject to provisions of the Payment of Wages Act.)
- (iv) Stoppage of increment without or with future effect.
- (v) Recovery from his pay of the whole or part of any pecuniary loss caused by the workman to the Company by negligence or breach of any of these orders.

Major Penalties:

- (i) Demotion to junior post of lower grade.
- (ii) Removal.
- (iii) Dismissal.

(b) No order imposing on a workman any of the minor penalties shall be made except after:-

(i) informing the workman in writing of the proposal to take action against him and of the imputation or misconduct or misbehaviour on which it is proposed to be taken and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal;

(ii) taking the representation if any submitted by the workman into consideration.

(iii) Recording a finding on each imputation of misconduct or misbehaviour.

(c) No order imposing any of the major penalties shall be made except after an inquiry is held in the manner prescribed below.....”

It is, thus, contended that since no information was given to the petitioner in writing regarding proposal to take action against him as also the details of all the imputation or misconduct or misbehaviour on which proposed action was contemplated against him this has resulted in denial of

reasonable opportunity as envisaged in the standing orders thereby resulting in serious prejudice to his rights.

I have heard learned counsel for the petitioner and have gone through the case file carefully.

To begin with, the petitioner was issued complete charge sheet with a statement of allegations and his reply was solicited which he apparently waived off by not responding to it. Thereafter, Enquiry was held in which the petitioner participated responding to it and even cross examined the witness. Subsequent to the findings being recorded by the Enquiry officer, a show cause notice was issued to the petitioner proposing his dismissal of service from the Corporation alongwith recovery of ₹17,68,172/-. The petitioner submitted his response thereto which was then considered by the competent authority and instead of dismissing the petitioner, punishment of stoppage of two annual increments with cumulative effect was imposed upon him alongwith recovery of ₹17,68,172/-. This resulted in appeal where the recovery was reduced by over ₹One lac and the amount was determined as ₹16,75,172/-.

The sequential facts noticed above indicate that an opportunity of hearing to the petitioner had been afforded at every stage of the proceedings and therefore, his plea that principles of natural justice have been violated, do not have much substance. Besides it is a settled principle of law that it is not every deviation from the Rule of *Audi Alteram partem* that the Courts have to draw presumption of violation of the principles of natural justice unless gross prejudice is shown to have resulted from such a process. The facts in hand would, however, show adherence to the rules of

natural justice. The plea of the petitioner that material such as comments of the Procurement Division and Recommendations of the disciplinary committee where he was not associated had been used against him leading to severe prejudice is incorrect. Even though the competent Authority has noticed that comments of the Procurement Division and recommendations of the Disciplinary Committee were gone into by it have not made material difference to the case of petitioner as the report of the Enquiry Officer has been accepted. If there had been a variation in the amount of recovery by enhancing the figure on the strength of the recommendations of the disciplinary committee or the comments of the Procurement Division, the petitioner's grievance still could have been appreciated. But if the figure has been maintained as ascertained by the Enquiry Officer and the punishment of dismissal toned down to stoppage of two annual increments the petitioner can hardly plead any prejudice. Therefore, in the considered view of this Court the petitioner has failed to establish any procedural irregularity leave alone establishing any prejudice in the process leading to the passing of the impugned orders. Consequently, I do not find any merit in the petition.

Dismissed in limine.

(Mahesh Grover)
Judge

8.1.2015
Meenu