

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

CIVIL WRIT PETITION NO.3049 of 2015

DATE OF DECISION: 27.02.2015

Mahabir Singh

... Petitioner

Vs.

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Sushil Jain, Advocate for the petitioner.

.....

TEJINDER SINGH DHINDSA, J.

The services of the petitioner, who was serving as Driver with the Haryana Roadways were terminated vide order dated 09.07.2012 (Annexure P-10) passed by the General Manager, Haryana Roadways, Delhi. Appeal preferred by the petitioner has been dealt with by the Additional Transport Commissioner-cum-Appellate Authority and order dated 02.05.2014 (Annexure P-12) has been passed, whereby, he has been directed to be reinstated in service and the penalty of stoppage of 5 annual increments with cumulative effect has been imposed.

It is towards assailing the validity of the order dated 02.05.2014 passed by the Appellate Authority at Annexure P-12 that the instant writ petition has been filed.

Counsel appearing for the petitioner has vehemently argued that while passing the impugned order, the length of service rendered by the petitioner i.e. more than 18 years has not been taken into account. In

furtherance of such submission, it is stated that it was the first case of absence from duty in his entire length of service and as such, the imposition of major penalty of stoppage of 5 annual increments with cumulative effect is grossly disproportionate in relation to the misconduct. Counsel has further submitted that the petitioner was suffering from an eye ailment and had undergone surgery on his left eye and as such, absence from duty could not have been construed to be intentional so as to attract the penalty that has been imposed. Allegations of bias have also been raised and it has been contended that the General Manager, Haryana Roadways, Delhi Depot was inimical towards the petitioner and which would be clearly demonstrated from the fact that initially, the charge sheet had been issued to the petitioner under Rule 8 of the Punishment and Appeal Rules, which had been withdrawn and thereafter, on the same very date i.e. on 25.06.2010, another charge sheet had been issued under Rule 7, which governs the imposition of major penalties. Yet another argument raised is that since the Appellate Authority had intervened to set aside the order of termination passed by the Disciplinary Authority, as such, the appeal should have been allowed in toto and there was no occasion for the Appellate Authority to have imposed the major penalty of stoppage of 5 annual increments with cumulative effect.

Counsel has been heard at length and the case paper book has been perused.

Facts in brief that would emerge from the pleadings on record are that the petitioner was appointed as Driver under the Haryana Roadways on 13.09.1996. He was issued a charge sheet under Rule 7 of the Punishment and Appeal Rules on 25.06.2010 on the charge that he had absented himself from duty from 21.02.2010 to 31.05.2010. Petitioner did

not submit his reply to the charge sheet within the stipulated time frame and vide order dated 21.12.2010, Inquiry Officer was appointed for conducting a regular inquiry. Inquiry report was submitted holding the charge levelled against the petitioner to be duly proved. The Disciplinary Authority having agreed with the findings recorded by the Inquiry Officer issued show cause notice dated 24.02.2012 contemplating the imposition of major penalty of termination from service. The petitioner chose not to respond to the show cause notice. Vide communication dated 26.04.2012, petitioner was directed to avail of an opportunity of personal hearing. The departmental proceedings finally culminated in the passing of the order dated 09.07.2012 by the General Manager, Haryana Roadways, Delhi at Annexure P-10, whereby services of the petitioner were terminated.

Petitioner preferred an appeal under Rule 9 of the Haryana Civil Services (Punishment and Appeal) Rules 1987. Such appeal has been partly accepted by the Additional Transport Commissioner-cum-Appellate Authority vide order dated 02.05.2014 in terms of which the penalty of termination has been substituted with that of stoppage of 5 annual increments with cumulative effect. Furthermore, Appellate Authority has taken a decision that the period of unauthorized absence from duty as also the period during which the petitioner remained out of service on account of passing of the order of termination of service would not be treated as a part of service for any purpose.

It is by now well settled that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches

is necessarily correct in the eyes of the Court. The Court in its power of judicial review does not act as an Appellate Authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence.

In the present case, counsel has raised a plea of bias against the Punishing Authority i.e. the General Manager, Haryana Roadways, Delhi Depot. However, such submission would be of no consequence. The order passed by the Punishing Authority has already been set aside by the Appellate Authority and a lesser penalty has been imposed. It is the order of the Appellate Authority that is under challenge in this writ petition and against whom, there are no allegations of malafide.

Even the contention raised by the counsel as regards the Appellate Authority not having the powers to impose penalty having taken a decision to interfere with the order passed by the Punishing Authority is without merit. The Disciplinary Authority undoubtedly is the sole judge of facts. However, where the statutory remedy of appeal is preferred, the Appellate Authority has co-extensive powers to re-appreciate the evidence as also to go into the nature and extent of punishment.

The powers vested with the Appellate Authority to impose appropriate punishment as also the scope of judicial review in matters relating to quantum of punishment came to be examined by the Hon'ble Supreme Court in **BC Chaturvedi v. Union of India and others, 1996 (1) SCT 617** and it was observed as follows:

"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the

misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In ***Regional Manager & Disciplinary Authority, State Bank of India, Hyderabad & another v. S. Mohammed Gaffar, 2002 (3) SCT 1066***, the Apex Court had held as under:

"The High Court seems to have overlooked the settled position that in departmental proceedings, insofar as imposition of penalty or punishment is concerned, unless the punishment or penalty imposed by the Disciplinary or Appellate Authority is either impermissible or such that it shocks the conscience of the High Court, it should not normally interfere with the same or substitute its own opinion and either impose some other punishment or penalty or direct the authority to impose a particular nature or category of punishment of its choice. It is for this reason we cannot accord our approval to the view taken by the High Court in disregard of this settled principle. Consequently, the appeal is allowed, the judgment of the Division Bench is set aside and that of the learned Single Judge shall stand restored. No costs."

Adverting back to the facts of the present case, a regular inquiry has been conducted against the petitioner in relation to a precise article of charge having been formulated i.e. absence from duty w.e.f. 21.02.2010 to 31.05.2010. Counsel has not been able to point out any irregularity or procedural infirmity insofar as the inquiry proceedings are

concerned. The Appellate Authority in the impugned order has scaled down the penalty from termination to that of stoppage of 5 annual increments with cumulative effect by taking into consideration that the petitioner did not have any history of having remained absent from duty and furthermore, the prosecution witness during the course of inquiry i.e. Om Parkash, Duty Inspector had not denied that the petitioner had furnished information with regard to the eye ailment that he was suffering from.

Be that as it may, the Appellate Authority has clearly observed that the petitioner had not submitted any leave application prior to absenting from duty for the period in question.

The petitioner was a Driver with Haryana Roadways. Public transport is an essential service. Staying away from duty without due authorization would have to be construed as serious misconduct. The penalty imposed by the Appellate Authority in the light of the order dated 02.05.2014 at Annexure P-12 is not found to be grossly disproportionate or such that would shock the conscience of the Court. Applying the dictum laid down by the Hon'ble Supreme Court in *BC Chaturvedi's case (supra)* and *General Manager & Disciplinary Authority, State Bank of India, Hyderabad's case (supra)*, no case for interference is made out.

The civil writ petition is accordingly dismissed.

27.02.2015

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

Note: Whether referred to the Reporter? Yes