

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

**RSA No.4490 of 2010(O&M)
Date of Decision: 20.04.2015**

Mrs. Sunita Chopra

... Appellant

Versus

The Commissioner and Secretary, Government
of Haryana Jail and Judicial Department & ors.

... Respondents

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

Present: Mr. K.L. Dhingra, Advocate,
for the appellant.

Mr. Mukesh Kaushik, D.A.G., Haryana.

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.(Oral)

The appellant was inflicted minor punishment on August 11, 2003 after holding regular inquiry for major misconduct on being held guilty of insubordination. A penalty of stoppage of two increments with cumulative effect was imposed on the appellant. It transpires that during the currency of the punishment, an employee junior to the appellant in the cadre of clerks was promoted by the department as an Assistant. Consequently, the department accorded an indulgence to the appellant by promoting her as an Assistant on August 23, 2004 retrospectively from the date her junior was promoted as an Assistant on February 11, 2004, but this promotion was made conditional and consequential benefits were granted only notionally. This would mean that the order dated August 23, 2004 would disentitle the appellant to monetary benefits under the order. To that extent the order

dated August 23, 2004 was adverse to the interest of the appellant but she did not challenge it in any proceedings including in the present suit which was confined to the order of punishment and the enquiry proceedings on various grounds which challenge has failed.

The charge against the appellant was that she had disobeyed the transfer and posting orders passed by the competent authority by not reporting at the station of transfer which was viewed as a misconduct warranting major penalty. So far as the challenge of the appellant to the order of punishment, no interference in second appeal is called for as authority to impose punishment would lie in the primary discretion of the disciplinary authority to choose one of the punishments provided by the rules on agreeing with the findings of guilt on the charges of misconduct recorded by the enquiry officer. It is well settled that quantum of punishment is within the domain of the disciplinary authority and the trial court, in this case, just as the writ Court exercises only secondary review jurisdiction as explained in **Om Kumar v. Union of India**, (2001) 2 SCC 386 would normally not interfere in the quantum of punishment imposed by the disciplinary authority unless it is hit by Wednesbury arbitrariness or is shockingly disproportionate to the gravamen of the charge or is irrational as no reasonable person would impose on the facts. Both the Courts have dismissed the suit and I find no ground to interfere in both the orders especially when the subsequent order dated August 23, 2004 was not called in the question in the suit nor was the suit amended to accommodate a challenge to the order. The order remains unchallenged to the extent of injury even though it is a promotion order. The appellant cannot be heard to complain of curtailment of monetary benefits and denial of difference of

salary during the period of suspension pending enquiry. Principles of natural justice pressed by the learned counsel by citing the decisions in **Vidya Parkash Harnal Vs. Haryana State**, 1995 (3) SCT 785, **Y.P. Sehgal Vs. Punjab State**, 1992 (2) SCT 179, **Madan Lal Vs. Haryana State**, 1997(3) SCT 465, **Dalip Singh Vs. Haryana State**, 2003 (4) SCT 261, **Karnal Singh Vs. Punjab State**, 2006 (3) SCT 277 are of no avail to the appellant and are distinguishable of facts. In absence of challenge to the primary and partially adverse promotion order dated August 23, 2004 it continues to operate detrimental to the interest of the appellant. Merely because the punishment order includes denial of difference of pay and allowances and restricts it to the subsistence allowance already paid for the period of suspension it will not make it any the less legal. If full salary was denied for the relevant period the appellant cannot seriously complain of breach of principles of natural justice and the necessity to be heard. Then I do not think the rule of *audi alteram partem* deserves to be stretched that far or to breaking point only to try and fault the order denying balance wages which portion of the order is encrusted inseparably with the punishment order and the full pay could only be denied by an independent determination on the question of full salary after hearing the appellant. I would like to hold this for the reason that the suspension cannot be held to be unjustified in the face of guilt established on the proven charges of misconduct upon the evidence adduced by the parties before the enquiry officer.

Before parting, I would like to say that service matters when filed in district courts waste too much time and energy of civil courts which could be better spent to discharge their classic role in settling pure civil disputes. Service matters filed against the State involve public documents

available on Government records which are unnecessarily put through the mill of production of documents by summoning witnesses who are mostly dealing hands mostly ill-equipped to answer questions in uncontrolled cross-examination on issues involving statutory rules, instructions and service law principles which should be best left to the writ jurisdiction to handle which is the more efficacious and speedier remedy. Look at this; it has taken a toll of 12 years in the civil courts on an issue to come finally in second appeal which case could have been easily cracked in a few hearings in the High Court even though the civil court is not without jurisdiction to decide. Though justice cannot be rationed in the words of Judge Learned Hand but time spent in dispensing justice can be. Civil courts ought not to be compelled under section 9 of the Code of Civil Procedure, 1908 to decide service law disputes with the time differential consumed being totally disproportionate to the ends served or sought to be achieved by litigation. This path detracts from the pressing main line jurisdiction already overworked, with lakhs of litigants waiting in the queue, in case where the civil court cannot be replaced by any other mode of dispute settlement. We should not see this as an increase in work of the High Court. All this requires rethinking on devising ways and means to reduce the work of the civil court even if it means increase in the workload of the constitutional courts, which in any case never shy from shouldering greater judicial responsibility. Civil courts were never designed to meet the demands of the Constitution of India and its principles in service law matters. Frankly, I would rather have decided this matter in writ jurisdiction than within the shackles of section 100 of the Code and still can set about to do so by overlapping jurisdiction, which all may agree, can be tad embarrassing

when the scope of the two jurisdictions is explored, read and understood. The judicial mind is seamless in its stream of consciousness while applying legal principles to a case and it is very hard to divide it in compartments, switching from one to the other and back and forth, just as in this appeal, in search of the just, juster and justest order.

For the foregoing reasons, no question of law, much less a substantial one arises in this appeal warranting interference in jurisdiction in regular second appeal. The appeal is devoid of merit and consequently the same is ordered to be dismissed and sent to the record room.

20.04.2015
monika

(RAJIV NARAIN RAINA)
JUDGE