

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

LPA No.1186 of 2015(O&M)

Date of decision:28.9.2015

Mahabir Singh

....Appellant

VERSUS

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

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

HEMANT GUPTA, J.(Oral)

The present Letters Patent Appeal under Clause X of the Letters Patent is directed against an order passed by learned Single Bench of this Court on 27.02.2015 whereby the penalty of stoppage of 5 annual increments with cumulative effect was found to be not vitiated warranting interference in exercise of writ jurisdiction of this Court.

The services of the appellant as a result of the disciplinary inquiry initiated against him were terminated vide order dated 09.07.2012. However, an appeal before the Additional Transport Commissioner-cum-Appellate Authority was accepted. The order of punishment of termination was set aside and a penalty of stoppage of 5 annual increments with cumulative effect was imposed upon the appellant. The challenge to the

said order remained unsuccessful before the learned Single Bench. Still aggrieved, the appellant has come out with the present appeal.

Learned counsel for the appellant has vehemently argued that the order passed by the Appellate Authority is contradictory in as much as having given a finding that the absence of the appellant from duty was after information to the Department but still, the Authority has imposed punishment of stoppage of 5 increments as well as that the period of unauthorized absence from duty will not be treated as a part of service. Such order runs counter to the earlier finding. The relevant finding from the order of Appellate Authority is extracted below:-

“In this case, the appellant could not produce any evidence regarding submission of leave application before proceeding on leave. He had the opportunity to deny the said allegation by submitting reply to the charge sheet which he failed to do so. Though he has stated that he sent a fax message on 26.03.2010, however, the said fax is not available on record which raises doubt about its authenticity. In view of the above the charge of remaining absent from duty from 21.02.2010 to 31.05.2010 without sanction of leave is proved against the appellant.”

We do not find any merit in the argument raised. The Appellate Authority has returned a categorical finding that the misconduct of the absence from duty from 21.02.2010 to 31.05.2010 without sanction of leave is proved against the appellant. However, while examining the quantum of punishment the Appellate Authority observed that the appellant was actually having problem with his eyes but it was found that absence from duty is unauthorized when the Appellate Authority observed as under:-

“Coming to the question of the quantum of penalty imposed on the appellant it is observed that he does not have the history of remaining absent from duty. This has been admitted by the prosecution witness in his cross-examination also. Further, from the cross-examination of the prosecution witness and documents submitted by the appellant it appears that he was actually having problem with his eyes. This is further supported by the fact that the prosecution witness Sh. Om Parkash. DI did not deny about the information given by the appellant regarding his illness when asked a question in this regard by the appellant during his cross-examination. “Public transport is an essential service in which certainty of operations is of vital importance. Absenting from duty by the employees in an authorized manner is certainly not desirable as it puts the public into inconvenience and therefore, such indiscipline needs to be checked sternly.” However, keeping in view the facts and circumstances of the case, particularly the fact that this was his first instance of remaining absent from duty and that he was actually having problem with his eyes. I am inclined to take a view that a softer penalty will meet the ends of justice in this case.

In view of the above, the appeal is accepted and the impugned orders are set aside. The appellant is reinstated in service with immediate effect. The penalty of stoppage of five increments with cumulative effect is imposed on the appellant. The period of unauthorized absence and the period during which he remained out of service due to issue of impugned orders will not be treated as part of service for any purposes.”

In view of the said fact, we do not find that the findings recorded by the Appellate Authority are anyway contradictory. The fact of unauthorized absence has been found to be proved. It was only considering the quantum of punishment, the authority has given some indulgence. In exercise of the powers of judicial review against an order passed by the Disciplinary Authority, power of the Court is limited to examine the decision making process. The Court does not act as an Appellate Authority. Learned counsel for the appellant could not point out any

infraction of the principles of natural justice or of the statutory Rules. The appellant was associated with the disciplinary proceedings; given show cause notice and after providing opportunity of hearing, the order of punishment was imposed upon the appellant.

We do not find that any cause is made out to interfere against the order of punishment imposed by the Appellate Authority and the order of the Learned Single Judge in the present Letters Patent Appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

SEPTEMBER 28, 2015
'D. Gulati'

(RAJ RAHUL GARG)
JUDGE