

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Letters Patent Appeal No.634 of 2015 (O&M)

Date of Decision: April 28, 2015

Baldev Singh Brar

....Appellant

versus

State of Punjab and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present: Mr.ADS Jattana, Advocate, for the appellant.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

This letters patent appeal impugns the order dated 31.10.2014 whereby learned Single Judge has allowed the appellant's writ petition in part to the extent that the order of his compulsory retirement as a punitive measure has been upheld but that of imposing the recovery of Rs.41,745.90 has been set-aside.

[2] The appellant joined the PWD (B&R) Department as a Sectional Officer on 08.09.1964 which was later on re-designated as Junior Engineer. The appellant was served with a charge-sheet dated 21.04.1992 under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, alleging as follows:-

- “(1) Embezzlement of 9.65 metric tonnes of bulk bitumen costing Rs.41,745.90.
- (2) Misconduct for not placing on record the

receipt of the stocks.

- (3) By embezzling Govt. property causing financial loss to the Govt., to the tune of Rs.41,745.90 paise.
- (4) Remaining willful absent from duty.”

[3] The appellant's reply was found unsatisfactory, hence, Sh.Jagir Singh, Superintending Engineer, Construction Circle, Faridkot, was appointed as Inquiry Officer. As per the enquiry report dated 27.04.1993, all the charges were proved. Consequently, the order dated 06.02.1996 was passed awarding the punishment of compulsory retirement and for recovery of Rs.41,745.90 with a further direction that the suspension period be treated as leave of the kind due.

[4] The appellant filed departmental appeal against the punishment order which was heard by the Minister-in-charge of the Department who passed an order dated 24.09.2001 in his favour. The State Government declined to give effect to that order and such an action was then challenged by the appellant before this Court in CWP No.18493 of 2005. That writ petition was disposed of vide order dated 11.08.2011 with the following directions:-

“..... The writ petition is accordingly disposed of with a direction to the Appellate Authority to decide the petitioner's appeal by passing a speaking order and also keeping in view the observations said to have been made by the Minister-in-charge. The Appellate Authority shall decide the petitioner's appeal within a period of four months from the date of receipt of a certified copy of this order and

the benefits flowing from the order dated 6/14th January, 2009 (Annexure P14) passed by the State Government on acceptance of the petitioner's appeal against the Minister's order shall also be granted within the above-stated period.....”

[5] In purported compliance of the Court-directions, the Secretary, PWD (B&R) Department, Government of Punjab, passed an order dated 27.04.2012 whereby the appeal was rejected, upholding the order dated 06.02.1996.

[6] Still aggrieved, the appellant approached this Court and the learned Single Judge vide order under appeal, has allowed his writ petition in part. The order of minor punishment for the recovery of Rs.41,745.90 paise has been set-aside following the decision of the Hon'ble Supreme Court in Union of India and another vs. S.C.Parashar, 2006 AIR (SC) 3566. Consequently, the order of compulsory retirement has been upheld.

[7] We have heard learned counsel for the appellant at considerable length and gone through the record with his able assistance.

[8] Manifold contentions have been raised by learned counsel for the appellant.

[9] Firstly, it is urged that the enquiry report (Annexure A-1), which is the foundation of punitive action, is signed by the Presenting Officer which clearly depicts that the Inquiry Officer did not apply his mind independently and his 'decision making process' was influenced by the Presenting Officer. The enquiry report, thus, does not meet with the requirement of a fair trial. We are, however, not impressed by

the contention. A perusal of the last page of enquiry report shows that the Inquiry Officer wanted both the parties to authenticate and sign the report. The appellant was absent but the Presenting Officer signed the report as an acknowledgment of conclusion of proceedings. The Presenting Officer was lower in rank than the Inquiry Officer. The mere authentication or acknowledgment of conclusion of enquiry proceedings by the Presenting Officer would not vitiate the conclusions drawn therein. It has to be borne in mind that the Inquiry Officer was a technical person, namely, a Superintending Engineer who had hardly any exposure of quasi-judicial functions like writing of an enquiry report.

[10] It is contended that the order passed by the Appellate Authority is totally cryptic and non-speaking. We do not find any merit in the aforesaid contention also. Firstly, it is a case where the Appellate Authority concurred with the Disciplinary Authority, hence, it was not required to re-write all the reasons. Secondly, the Appellate Authority did apply its mind and took notice of the contentions and the findings returned against the appellant before it decided to reject the appeal. The appellate order is well reasoned and does not call for any interference.

[11] The contention that the observation made by this Court in the earlier order dated 11.08.2011 to the effect that the appeal shall be decided keeping in view the observations made by Minister-in-charge have not been followed, also merits rejection. Those observations cannot be construed to command that the order passed by Minister-in-charge on the file must be followed. The fact that the Appellate Authority, on consideration of the enquiry report and other material, has

formed its view that the appellant was guilty of misconduct, is sufficient to infer that the Appellate Authority has decided not to follow the reasons assigned by the Minister-in-charge.

[12] The last plea, namely, that the order passed by the Minister-in-charge could not be superseded by the Chief Minister or that no such appeal was maintainable before the Chief Minister, in our considered view, is totally mis-directed and misconceived. We say so for the reason that the Minister-in-charge had passed the order on file and admittedly it was not given effect. It does appear that as per the Rules of Business, such file was required to be submitted before the Chief Minister for approval, who declined to accord the same. The order proposed by the Minister-in-charge thus never attained finality. Further, such a plea was impliedly rejected by this Court vide the previous order dated 11.08.2011 as instead of approving the decision of the Minister-in-charge, a direction was issued to decide the appellant's departmental appeal in accordance with law.

[13] Likewise, the punishment awarded to the appellant, namely, compulsory retirement in a case where misappropriation of public funds has been approved, does not call for any interference.

[14] In the totality of the circumstances, no case to interfere with the order passed by learned Single Judge is made out.

[15] Dismissed.

[SURYA KANT]
JUDGE

[P.B.BAJANTHRI]
JUDGE

April 28, 2015
mohinder

CM No.1301 of 2015 in
LPANo.634 of 2015

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Baldev Singh Brar Vs. State of Punjab and another

Present : Mr.ADS Jattana, Advocate,
for the applicant-appellant.

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Since we have decided the main appeal on merits, no separate order is required to be passed on this application for condonation of delay of 123 days in filing the appeal.

(SURYA KANT)
JUDGE

April 28, 2015
mohinder

(P.B.BAJANTHRI)
JUDGE