

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

Cr.O.C.P. No.32 of 1995

Date of decision: 01.03.2016

Chaman Lal Goyal

... Petitioner

Versus

M.S.Chahal and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

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

Present: Mr. Chaman Lal Goyal, petitioner in person.

Mr. Gurvinder Pal Singh, Addl. A.G.Punjab

AMOL RATTAN SINGH, J.

1. This criminal contempt petition originates from the fact that whereas the Enquiry Officer, in the disciplinary proceedings held against the petitioner, which are subject matter of CWP No.15674 of 1995, held that charge No.4, relating to dangerous prisoners attempting an escape from jail on 01.01.1987, by breaking the wall of their barracks, was a charge mainly proved against the petitioner, the order of punishment passed by respondent No.1 herein, stated that the said charge, alongwith charge No.5 was not proved. That order, which imposed a punishment of compulsory retirement from service on the petitioner, was passed on 29.09.1995, which was a date two days prior to the expiry of the period granted by the Supreme Court to the Government, for concluding the disciplinary proceedings against the

petitioner.

The hon'ble Supreme Court, in Civil Appeal No.1101 of 1995, had directed as follows:-

“It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex-parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped.”

This order was passed by the Apex Court on 31.01.1995. Thus, 8 months' time to conclude the disciplinary proceedings, would have expired on 30/31.09.1995.

2. The petitioners' allegations in this petition are that the aforesaid order passed by respondent No.1, on 29.09.1995, was fraught with malafides and was violative of the principles of natural justice, inasmuch as, while holding the petitioner to have been absolved of charge No.4, which was the most serious charge in the charge sheet issued against him, he was still imposed a punishment of compulsory retirement.

Further, to compound the matter, respondent No.1 substituted the said order with another order shown to be dated 29.09.1995, but which was annexed with a forwarding letter dated 10.11.1995. In the substituted order, it was stated that charge No.4 was mainly proved against the petitioner.

3. Thus, the petitioners' allegation is that the substituted order has been issued with a wholly malafide intention of indicting the petitioner and to ensure that the punishment of compulsory retirement is not held to be

unsustainable, because the said order had been challenged by the petitioner by way of CWP No.15674 of 1995, as already noticed.

4. Mr.Chaman Lal Goyal, who appeared in person in this petition also, which was earlier ordered to be heard alongwith CWP No.15674 of 1995, submitted that the other reason for substituting the original order was that had a subsequent date, i.e. 10.11.1995, been shown on the substituted order, it would have meant dropping of the disciplinary proceedings, being 11 to 12 days beyond the 8 months time granted by the Supreme Court to conclude the proceedings. Hence, the first order having been passed, without any application of mind, the second order was passed, after notice had been accepted in Court in the Civil Writ Petition, by the Deputy Advocate General, Punjab.

Therefore, Mr.Goyal further contended, that the respondents herein, including respondent No.2 against whom the petitioner has alleged malafides in CWP No.15674 of 1995 and respondent No.3, who has signed the endorsement on the original as well as substituted order dated 29.09.1995, are guilty of criminal contempt, for deliberately violating the Supreme Court order and in being malicious towards the petitioner.

5. Only respondent No.3, Gurpal Singh, Deputy Secretary, Home (G), Government of Punjab, has filed a reply to this contempt petition, with neither respondent No.1, M.S.Chahal, (former) Principal Secretary under whose signatures both the orders were issued, nor even B.S.Sandhu, respondent No.2, the then IG Prisons, having bothered to file a reply.

6. In the reply filed by respondent No.3, he has reiterated time and again that the substituted order was only passed to correct a bonafide mistake made in the original order dated 29.09.1995 and that all charges of

malafides etc. are wholly incorrect.

It has further been stated that as a matter of fact, the Government had accepted the finding of the Enquiry Officer qua all the charges against the petitioner, and since the Enquiry Officer had found that charge No.4 was mainly proved against the petitioner, the recording in the original order dated 29.09.1995, to the effect that the Enquiry Officer had found that charge No.4 was not proved, was a wholly inadvertent bonafide mistake. At the end of the reply, an apology has also been tendered by respondent No.3 stating that though there is no lapse on his part and he had acted in good faith and a bonafide mistake had occurred, if there was any lapse, it was regretted and apology tendered.

7. Having considered the contentions in the petition and in the reply filed by respondent No.3, as also the arguments made by Mr.Goyal and learned State counsel, we must at the outset express our displeasure, both for the non-application of mind by respondent No.1 and respondent No.3, before signing the original order dated 29.09.1995 and further, against respondents No.1 and 2 for not even having filed a reply to this petition. Of course, in view of the fact that they chose not to file their respective replies, we can hold them to have accepted the contents of the petition and therefore hold them guilty of contempt.

However, viewing the matter on merits, we are unable to hold that actually any criminal contempt was committed by the respondents in either issuing the original order imposing a punishment of compulsory retirement on the petitioner, despite showing charge No.4 to have not been proved against him, or even in issuing the substituted order 12 days later.

We say this for the reason that, as stated in the reply of

respondent No.3, and as we have also held in our judgment in CWP No.15674 of 1995 pronounced by us today itself, the Government had already accepted the findings of the Enquiry Officer⁰ in which charges No.1 and 2 of the enquiry report were held to have been fully proved against the petitioner, charges No.3 and 6 to have been partially proved, charge No.5 to have not been proved and charge No.4 to have been mainly proved. Hence, with the Government having accepted the said enquiry report and thereafter the (original) order dated 29.09.1995, reflecting charges No.4 and 5 both, to have not been proved, was obviously an inadvertent mistake in the order though one which should have been avoided, with respondent No.1 and 3 herein having signed that order. Obviously, they did not bother to read it carefully enough showing lack of application of mind, for which they deserve to be reprimanded. However, the mistake having occurred obviously inadvertently and even due to carelessness, it would not amount, in our opinion, to criminal contempt in any manner and consequently, rectification of the original order, by removing the said mistake, also cannot be held to be a contemptuous action.

8. While deciding CWP No.15674 of 1995, we have already quashed the punishment order dated 29.09.1995, for this very reason, that there was lack of complete application of mind by the punishing authority, inasmuch as, he issued an order of compulsory retirement even while showing that one of the main charges have not been proved against the petitioner. Hence, we have granted liberty in that judgment, to the successor of the officer who has been impleaded as respondent No.1 in the present petition, to consider the matter afresh and to pass a fresh order after due application of mind, as to whether, the petitioner should have been imposed the

same or a lesser punishment, as was imposed in the order dated 29.09.1995.

9. Even though we have held in the aforesaid writ petition that there was a lack of application of mind and consequently have quashed the order, we still hold in this petition that the mistake was inadvertent and therefore does not amount to contempt by the respondents, we may further state here that despite holding as above in this petition, that the mistake was an inadvertent one, we do not detract from our opinion that there was lack of application of mind by respondent No.1 in issuing the punishment order because even if the mistake was bonafide, punishment order would still have to be re-looked at by the competent authority, only so as to ensure that no punishment is meted out to the petitioner without a complete and dedicated application of mind.

Hence, to repeat, even if the orders dated 29.09.1995, both the original as well as the substituted order, were the result of a mistake which was subsequently corrected, and on account of that, there was obvious lack of application of mind, we hold that the same did not amount to contempt of the order of the Supreme Court directing the State of Punjab and the competent authority within the State to conclude the disciplinary proceedings within a period of 8 months from 31.01.1995.

Consequently, the present contempt petition is dismissed.

01 .03.2016
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(RAJIVE BHALLA)
JUDGE

(AMOL RATTAN SINGH)
JUDGE