

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.2518 of 2001 (O&M)

Date of Decision: 07.11.2016

Jagjit Singh

... Petitioner

Versus

The Punjab & Haryana High Court
and others

... Respondents

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

Present: Mr. R.K. Chopra, Sr. Advocate,
for Ms. Gagandeep Kaur, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. In his tirade against the petitioner his uncle left no stone unturned including making an application under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure in this petition for being impleaded as a party to oppose it. The Coordinate Bench on September 27, 2006 noticed the pleadings and dismissed the application observing that the applicant has got other ways and means to settle scores with the petitioner but permitting him to become a party does not seem to be proper for the just decision of the writ petition.

2. No one appears for the High Court or the Sessions Division but that would not deter this Court from passing a final order after hearing Mr. Chopra.

3. The facts briefly are that the petitioner was an employee of the Sessions Division Patiala when his uncle made a complaint against him that he had deposited ₹ 80,000/- to apply for allotment of a flat in a scheme

floated by the Chandigarh Housing Board. He was on deputation from Sessions Division, Patiala to the Sessions Division, Chandigarh. The complaint was taken cognizance of and an inquiry was instituted in the matter. In the inquiry, it was found that deposit had been made with the Housing Board but petitioner was an unsuccessful applicant and the money was returned by the Board. The District & Sessions Judge, Patiala in his report dated May 31, 1999 found without doubt that the official was “completely and totally remiss in his obligation to report the matter to his department before applying for a flat and to seek permission and even *ex post facto* sanction to raise the loan”. The disciplinary authority, however, found a mitigating circumstance that the application for allotment was rejected by the Housing Board and the money borrowed by the petitioner towards application amount was returned to his respective creditors. The learned D&SJ Patiala records that the matter would have been found serious if the official had failed to give a proper explanation in case of allotment of a house.

4. The disciplinary authority held that the official deserves to be severely reprimanded in indulging in a financial transaction without taking prior permission of his department.

5. As a result, the inquiry against the official was filed after inflicting punishment of severe reprimand. The petitioner was conveyed the punishment vide letter dated July 06, 1999 at Annex P-10.

6. The matter having been set at rest with infliction of minor penalty was re-opened during an inspection carried out in the Sessions Division at Patiala on the basis of a second complaint by his uncle with

whom his father and another paternal uncle had ongoing family disputes and in this cross-fire the petitioner had set his foot on a snare laid by his uncle. With the re-opening of the matter, the petitioner was charge-sheeted afresh.

7. Aggrieved by communication of the memorandum of charge dated August 19, 2000 at P-13 the petitioner has approached this Court in the present petition praying that the proceedings initiated lack jurisdiction on account of the fact that he had already been punished for the same offence and power to punish stood denuded in the disciplinary authority being the Sessions Judge, Patiala and therefore he cannot be vexed twice for the same misconduct as that would amount to breach of constitutional protection in Article 20 (2) which obligates the State not to prosecute or punish a person for the same offence more than once.

8. There is merit in this contention and on this short point, this Court is of opinion that the constitutional obligations in Article 20 (2) militate against *de novo* proceedings and deserve to be read in favour of the petitioner. Once the competent authority has taken a decision neither he nor his successor-in-office could legally re-open the case closed unless the first decision was based on a mistake of fact or a mistake of law and not otherwise. There is a well recognized rule against launching *de novo* departmental proceedings and enquiries in our system of law and procedure as it would amount to completely setting aside previous enquiry when no legal or factual flaw is pointed out in the previous report; see, K.R.Deb v. The Collector of Central; Excise, Shillong, (1971) 2 SCC 102. Moreover, an enquiry begins with a charge sheet and ends either in exoneration or punishment. Once punishment is imposed by the competent authority and

becomes final, choice of punishment lies with the disciplinary authority in exercise of his discretion and subjective satisfaction which is ordinarily not to be interfered with except on known grounds of challenge such as perversity, irrationality or harsh and excessive and arbitrary punishment which shocks the conscience of the Court, arbitrariness measured on Wednesbury principles.

9. It may be mentioned that when notice of motion was issued in this case on February 22, 2001 it was ordered by the Division Bench of this Court that departmental proceedings may continue but the final order will not be passed. The order has continued to operate till today. After a passage of 15 years lifting the interim order would to my mind result in manifest injustice to the petitioner.

10. For the foregoing reasons I find sufficient merit in this petition to make the interim order absolute. The charge-sheet will not be read against the petitioner in any context with respect to his past and future service benefits. The petition is allowed. The charge sheet is invalidated.

(RAJIV NARAIN RAINA)
JUDGE

07.11.2016

manju

Whether speaking/reasoned Yes

Whether reportable Yes