

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

**CWP No. 16905 of 2012**  
**Date of decision: 16.03.2016**

Varinder Kumar Puri

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA**

Present: Mr. S.K. Arora, Advocate,  
for the petitioner.

Mr. L.S. Virk, Addl. A.G., Punjab.

**G.S.SANDHAWALIA, J.**

The petitioner challenges the order dated 17.06.2005 (Annexure P-1) whereby, his services have been terminated on account of the fact that he had remained absent from 10.05.1997 to 05.06.1997 and thereafter from 15.08.1997 till the period he was charge sheeted on 26.03.1998. The said order has been upheld in appeal on 14.07.2011 (Annexure P-3) by respondent no. 1 on the ground that the petitioner had remained absent on transfer and it being a serious disciplinary matter and since no new facts had been shown during personal hearing, the appeal was dismissed.

Counsel for the petitioner, at the outset, has restricted himself to the scope of quantum of punishment on the ground that he had 29 years of service on the date of dismissal and that the fact that the order of extreme penalty of termination was shockingly disproportionate.

It is the pleaded case of the petitioner that he had joined the respondent-department as an Assistant Accountant on 07.05.1976. He had

been served with the charge sheet, to which he had submitted a detailed reply that he could not join duty due to his adverse family circumstances. The inquiry officer had been appointed and the charges had been found proved against him vide which the services were terminated. His appeal had not been decided from 2005 to 2011 and he had to approach this Court to seek directions for decision of his appeal which had been dismissed by passing a non-speaking order. Neither his GPF had been paid in spite of serving a legal notice and the factum of his 29 years of service had not been considered.

Counsel for the State has submitted that the petitioner did not have any unblemished service as contended at the time of the issuance of notice of motion. He was an habitual absentee. Reference is made to various punishments imposed upon him whereby his annual increments had been stopped on various occasions and accordingly, it was submitted that the order was justified.

It is not disputed that the petitioner had been transferred from the office of Punjab Roadways, Moga to the Amritsar Depot which led to his absence from 10.05.1997 to 05.06.1997. He had joined the duty on 06.06.1997 at one point and thereafter from 15.08.1997 absented himself. The inquiry officer has factually found that the guilt is there on the record and there was no irregularity as such which led to the termination order. The whole case of the petitioner is that his mother was old and she was around 90 years old and there was nobody to look after, as had been put forward in the appeal also. This fact has not even been adverted to by the appellate authority which has dismissed the appeal by giving the following

reasons:-

*“4. After considering the case from all angles, I have come to the conclusion that the appellant has not shown any new fact during personal hearing. It has been stated by the employee himself that he has remained absent due to transfer. Remaining absent on transfer is a serious disciplinary matter. Therefore, no lenient view can be taken with the employee. Therefore, I dismiss the appeal filed by the appellant.”*

The appellate order is liable to be set aside on this ground as it apparently is a non-speaking order. It is also not disputed that the appeal was pending before the appellate authority for a period of 6 long years and only on issuance of directions by this Court, the appeal has been finally decided.

The quantum of punishment which has been imposed is also such that apparently one which shocks the conscience of the Court. The Apex Court in ***B.C. Chaturvedi vs. Union of India, AIR 1996 SC 484*** held that the Court could appropriately mould the relief or direct the appellate authority to reconsider the penalty imposed. For shortening the litigation in exceptional and rare cases, appropriate punishment could be imposed keeping in view cogent reasons in support.

A similar view was taken in ***Chairman and Managing Director, United Commercial Bank and others vs. P.C. Kakkar, 2003 (4) SCC 364***. The relevant portion reads thus:-

*“It is settled that the court should not interfere with the administrator's decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court in the sense that it was in defiance of logic or moral standards. In view of the Wednesbury principle the court would not go into the*

*correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency in decision-making process and not the decision.*

*Therefore, unless the punishment imposed by the disciplinary authority or the Appellate Authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In the normal course if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the disciplinary authority or the Appellate Authority to reconsider the penalty imposed.”*

Similar view was taken in ***Dev Singh vs. Punjab Tourism Development Corporation Ltd., 2003 (8) SCC 9***, in which case, on account of misplacement of file, the employee was dismissed from service. It was held that there was no motive attached with such misplacement and the extreme punishment of dismissal was shocking and accordingly, the same was substituted by withholding of one increment including the stoppage at the efficiency bar.

In the present case also, keeping in view the fact that the petitioner has served for almost 30 years and had absented himself for over 7 months which cannot be justified in any manner as such. But, however, keeping in view the fact that the lesser punishment of compulsory retirement could have been imposed upon him so that at least he could have earned his retiral benefits though the State has tried to justify the fact that there were earlier orders of punishment imposed upon him on account of

absence. The same does not find mention in the punishment order and thus, this Court is of the opinion that the written statement cannot supplement the reasons given in the order impugned. Reference can be made to the observations of the Apex Court in this context in ***Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others, 1978 (1) SCC 405***. The relevant observations read thus:-

*“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. In Gordhandas Bhanji case :*

*"Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself".*

*Orders are not like old wine becoming better as they grow older.”*

The said view was followed recently in ***Dipak Babaria and another vs. State of Gujarat and others, 2014 (3) SCC 502*** and it was held

that the government could not improve its stand with the aid of affidavits.

Resultantly, the present writ petition is allowed. The order of dismissal dated 17.06.2005 and the appellate order dated 14.07.2011 (Annexures P-1 and P-3) are quashed. It is directed that the order of dismissal be converted into an order of compulsory retirement w.e.f. 17.06.2005. The respondents are directed to work out the retiral benefits of the petitioner from that date and remit the same to him within a period of 3 months from the date of receipt of certified copy of this order. In case the due amount is not released to the petitioner within the aforesaid period, the petitioner would be entitled to 8% interest from the date the amount falls due.

The petition stands disposed of accordingly.

16.03.2016  
shivani

(G.S. SANDHAWALIA)  
JUDGE