

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

**CWP No. 1808 of 2016
Date of decision: 28.09.2016**

Union of India

.....Petitioner

Vs.

Ashok Kumar Jain and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. Ashwani Kumar Bura, Advocate for the petitioner.
Mr. Rajinder Goyal, Advocate (Free Legal Aid counsel) for the LRs
of respondent No.1

Ajay Kumar Mittal,J.

1. Through the present petition under Articles 226/227 of the Constitution of India, the petitioner impugns the order dated 21.11.2014, Annexure P.1 passed by respondent No.2-Central Administrative Tribunal, Chandigarh Bench, Chandigarh (in short, "the Tribunal") being illegal, unjust and contrary to the true factual position.

2. A few facts necessary for adjudication of the controversy involved as narrated in the petition may be noticed. Respondent No.1-Sh. Ashok Kumar

Jain (since deceased) joined the petitioner-Department as Junior Geologist w.e.f. 04.01.1982. He was promoted as Senior Geologist in the petitioner-Department. While serving as such, he was served with a charge-sheet under Rule 16 of the Central Civil Services (Classification Control and Appeal) Rules, 1965 (in short, “the Rules”) vide Memo dated 11.10.2010, Annexure A.3. Respondent No.1 submitted his reply to the Competent Authority which was not found to be satisfactory. Thus, the competent authority decided to proceed with the departmental enquiry against respondent No.1. Inquiry Officer was appointed vide order dated 28.01.2011, Annexure A.9. Report was submitted by the Inquiry Officer on 05.05.2011, Annexure A.4. After considering the report submitted by the Inquiry Officer and the misconduct of the respondent No.1, the disciplinary authority imposed a minor punishment of “Censure” upon him vide order dated 27.03.2012, Annexure A.1. Aggrieved by the said order, respondent No.1 filed an appeal dated 26.04.2012, Annexure A.12. The appellate authority dismissed the appeal vide order dated 26.07.2013, Annexure A.2. Undaunted, respondent no.1 filed an original application before the Tribunal, challenging the charge-sheet dated 11.10.2010, Annexure A.3, enquiry report dated 05.05.2011, Annexure A.4, punishment order dated 27.03.2012, Annexure A.1 and the appellate order dated 26.07.2013, Annexure A.2. Prayer was also made for a direction to the petitioner-department to grant respondent No.1 promotion to the post of Superintending Geologist for the panel year 2010-2011 w.e.f. 25.02.2011 when his juniors were promoted as such in the department with all consequential benefits. The petitioner-department submitted the detailed written statement. Respondent No.1 filed rejoinder to the written statement. Vide order dated 21.11.2014, Annexure P.1, the Tribunal quashed the order

passed by the competent authority. Hence, instant writ petition by the petitioner-department.

3. We have heard the learned counsel for the parties.

4. It is the admitted position that respondent No.1 joined the respondent-department as Junior Geologist w.e.f. 04.01.1982. Thereafter, he was promoted as Senior Geologist. He was served with a charge-sheet vide memo dated 11.10.2010 under Rule 16 of the Rules on two allegations i.e. absence from duty and secondly he did not complete his field assignments. After considering the matter, the competent authority decided to proceed with a regular departmental enquiry. The Inquiry Officer submitted his report dated 05.05.2011, which was accepted by the Disciplinary Authority and keeping in view the misconduct on the part of the delinquent official, the Disciplinary Authority imposed minor penalty of Censure vide order dated 27.03.2012, Annexure A.1. The statutory appeal filed by respondent no.1 against the said order was dismissed by the Appellate Authority vide order dated 26.07.2013, Annexure A.2. The original application impugning the charge sheet dated 11.10.2010, enquiry report dated 5.5.2011, punishment order dated 27.3.2012 and appellate order dated 26.7.2013 was filed before the Tribunal. It has been categorically recorded by the Tribunal on the basis of law laid down by the Apex Court that the Courts/Tribunals would not interfere with the findings recorded by the Disciplinary Authority unless the delinquent is able to prove that it was the case of no evidence or there was procedural lapse in conducting the enquiry. In the present case, only two articles of charges were levelled against respondent No.1 whereas the Inquiry Officer had recorded his finding on five points. Thus, it was recorded by the Tribunal that the Inquiry Officer travelled beyond the scope of his power. The relevant findings recorded by the Tribunal read thus :-

“9. We are conscious of the fact that in departmental proceedings as per the judgments of the Hon’ble Supreme Court, the courts/Tribunals cannot interfere with the findings recorded by the Disciplinary authority unless the delinquent is able to prove that it is a case of no evidence or there is a procedural lapse in conducting the enquiry which resultant in miscarriage of justice. In this case, the applicant has raised plea that he was served with a charge memo under rule 16 of the 1965 rules wherein only two articles of charges were served, whereas the inquiry officer has recorded his finding on five points, therefore, he has travelled beyond the scope of his power, therefore order is bad in law. For ready reference, the articles of charges being relevant read as under:-

Article I

Sh. A.K. Jain, Geologist (Sr.) has availed earned leave for the period 05.08.2009 to 12.08.2009. He submitted his joining report on 13.08.2009 at 1500 hrs (A.N.). The director asked him to submit his joining report afresh for the period of leave from 05.08.2009 to 13.08.2009 (A.N.). Sh. Jain did not comply with the orders of the controlling officer and instead left the office without any intimation. Sh. Jain subsequently remained absent in the office from 13.08.2009 (A.N.). On 20.08.2009, he conveyed on phone (11.00 hrs) that he was medically indisposed and would resume duty only on 24.08.2009. In 24.08.2009 (F.N.). Sh. Jain submitted his joining report requesting E.L. w.e.f. 16.08.2009 to 22.08.2009 and medical leave w.e.f. 17.08.2009 to 21.08.2009. This joining report was returned to him asking for an explanation for his absence for the period from 13.08.2009 (A.N.) to 20.08.2009. Sh. Jain did not submit any reply.

Article II

Sh. A.K. Jain also did not respond to several letters from Director & H.O.O. O.P: PH & HP, Chandigarh, seeking his explanations for not reporting for duty.

Sh. Jain did not complete his filed assignments as well. He has been warned on numerous occasions but he continued with his indifferent attitude. He remained irregular, unpunctual in office attendance, and careless and indifferent in drafting and presenting his diaries and reports.

Thus, by absenting himself from office frequently and availing leave without prior sanction/intimation to the office, Sh. A.K. Jain, Geologist (Sr.), exhibited gross misconduct and lack of devotion to duty in a manner

unbecoming of a Govt. Servant in contravention of Rule 3(1) (iii) and Rule 18 (3) of CCS (Conduct) Rules, 1964;”

Perusal of the above read with findings of I.O makes it clear that contention of the applicant is to be accepted. For the period as indicated above in the first charge, the applicant was treated absent from duty whereas the applicant was already granted the sanctioned leave for that period, which can be seen from the Annexure A.5. Qua, second article of charge, a finding has been recorded by the inquiry officer in the second last para of the inquiry report (Annexure A.5), which reads as under:-

“Keeping in view, the above observations based on official records and discussions with Sh. R.S. Rana, Director, RGM, Inder Singh, Director & HOO, A.K. Wangu, Sr. Geologist and other officers and some staff members of the GSI, Chandigarh, it is concluded that Sh. A.K. Jain, Sr. Geologist informed his problems regarding filed work to the higher authorities, although violating the office procedure. If timely intervention and action could have been taken by the higher authorities for sending Sh. Jain to field, the pending targets definitely could have been achieved and lot of official correspondence which also cause tense relations among officers mainly Sh. R.S. Rana, Director, RGM, Sh. S.C. Kaura, Director & HOO (at that time) with Sh. A.K. Jain, Sr. Geologist could have been avoided.”

Therefore, it cannot be said from any angle that there was a fault on the part of the applicant in not achieving the pending target. Even from the perusal of the same it is clear that the 5 points have been recorded by the inquiry officer whereas the applicant was served with only two articles of charges. Therefore he travelled beyond the scope, which resultant in holding him guilty without giving him chance to rebut, thus it violate the basic principle of natural justice. Moreover, the inquiry report does not suggest in any way that applicant is guilty of any charge leveled against him. In view of the above we are in agreement with the applicant that the impugned order cannot sustain.”

5. Learned counsel for the petitioner-department has not been able to show that the findings recorded by the Tribunal are illegal or perverse. He has

also not been able to show anything on record to upset the said findings. In any case, during the pendency of the petition, respondent No.1 has died on 17.04.2016. Even otherwise, the punishment awarded was minor. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

September 28, 2016
‘gs’

(Ramendra Jain)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes