

CWP No. 4911 of 2013

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

CWP No. 4911 of 2013

Date of decision : September 2, 2016

Harish Kumar Gupta

..... Petitioner

Versus

State of Haryana and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present:- Mr. J. S. Maanipur, Advocate
for the petitioner.

Ms. Shruti Jain Goel, AAG., Haryana.

RAJIV NARAIN RAINA, J (oral).

The only reason to deprive the petitioner of arrears of difference of salary and subsistence allowance paid during the period of suspension was rather facile in assuming that balance salary minus subsistence allowance is not be paid since the punishment of censure when challenged was upheld by the civil court at Ambala and suit dismissed and therefore the punishment awarded had attained finality and could not be reopened. Though it is within the domain of the punishing authority to pass a specific order on how the period of suspension is to be treated and whether arrears are to be denied but still this power has to be exercised reasonably and by assigning proper reasons which might indicate what weighed in the mind of the disciplinary authority for the Court to exercise judicial review of administrative action effectively.

In this case, I find no reason or justification in the

impugned order dated 11.11.2011 (Annex P-3) passed by the Special Secretary to Government of Haryana in the Development and Panchayats Department in restricting the salary for the suspension period to the allowances already drawn to be appropriate measure. While passing the order the competent authority has treated the suspension period from 24.4.1998 to 4.11.1999 as “duty period” for “all purposes”. If the disciplinary authority has treated the suspension period for “all purposes” without clarifying as to what that means then it leaves one guessing without its dimensions marked. This spatial part of the order appears apparently to be in conflict with the first part of the twin thinking processes adopted, then in my opinion, the impugned order is even more difficult to unscramble and therefore to judicially review. Any review exercise would inevitably add court content which is absent on the face of the impugned order while mechanically denying payment of the difference of salary for the suspension period, while Court should not add reasons to support or annul an executive order.

In appeal against the order of the disciplinary authority, the appellate authority has fallen victim of the same error by not recording any reasons whatsoever as to why the petitioner was not entitled to a fair deal and fair treatment and due consideration of his claim when the alleged misconduct was visited by only minor punishment of censure in order to deprive him of full salary for over one and a half years of suspension without sufficient cause.

What has apparently weighed in the mind of the appellate authority is that the petitioner has no right to challenge the minor penalty inflicted by way of “censure” and therefore, it follows sequitur that he must

in all the available circumstances be deprived of the arrears of difference of salary for the period of suspension from service. This is far too simplistic a view taken in the scope of service jurisprudence governed by rules of service. The authority would need to address both the issues; one, whether suspension on the charge levelled was justified and two, whether minor penalty of censure was proportionate to the length of suspension to justify depriving employee of substantial part of salary. Both would involve inquiry in search of the golden mean and to put thought process on paper by attaching relevant reasoning. But suspect reasoning is open to judicial scrutiny even though the decision-making process is not. On these crucial aspects the impugned orders are highly suspect being bereft of reasoning.

Resultantly, both the orders are found eminently suffering from lack of application of mind and and reveal an unsound approach to the issue and fall far short of the standards declared and enunciated in the judgment rendered by the Constitution Bench of the Supreme Court in **S. N. Mukherjee Vs. Union of India**, AIR 1990 SC 1984 of the necessity of recording reasons while creating or destroying valuable rights. Reasoning is part of the rule of law and a decision adverse cannot be a product of humour.

In view of the above dicta propounded by the Supreme Court, the impugned orders dated 11.11.2011 and 11.11.2012 (Annex P-3 and P-5) are palpably illegal and arbitrary and wholly unsustainable in law and have deservedly to be set aside by writ of certiorari.

A priori, the case is remanded to the disciplinary authority to pass a fresh order in accordance with law and to tune it with past precedent regarding the method of treatment of the suspension period

keeping in view the facts of the case. And in this the petitioner would be effectively heard before the final order is passed.

Needless to say, if the period of suspension has been treated on duty for “all purposes” then the disciplinary authority would address the issue and render his opinion on this foremost aspect.

The needful be done within a period of six weeks from the date of receipt of a certified copy of this order.

Accordingly, the writ petition is partly allowed and is hereby disposed of in the above terms.

(RAJIV NARAIN RAINA)
JUDGE

September 2 , 2016
archana

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>No</i>