

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

CWP No.7672 of 2015 (O&M)

Reserved on : 27.09.2016

Date of decision :02.12.2016

Hari Swaroop

... Petitioner

Vs.

State of Haryana & others

... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. B.S. Rathee, Advocate for the petitioner.

Mr. Rajesh Gaur, Additional Advocate General, Haryana.

...

TEJINDER SINGH DHINDSA, J.

Petitioner who is a retired Principal from the Education Department, State of Haryana has filed the instant petition assailing the order dated 21.02.2014 (Annexure P-9) issued by the Principal Secretary to Government of Haryana, School Education Department imposing upon him the punishment of stoppage of one grade increment without cumulative effect.

Brief facts leading to passing of the impugned order may be noticed. Petitioner joined as a Teacher under the Haryana Education Department and earned promotions to the post of Head Master as also Principal and from which post, he stands superannuated. While serving as Head Master in Government Senior Secondary School, Jakhal Mandi (Fatehabad), disciplinary proceedings were initiated against him in the light of a charge sheet dated 06.07.2009 under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987. The precise articles of charge drawn against the petitioner were in the following terms:

“That Sh. Hari Swaroop during the period of 04.03.2004 to 20.07.2007 while holding the post of Headmaster, Govt. High School, Dagra (Fatehabad) made the following irregularities for which he is being charge sheeted:-

- 1. That Sh. Hari Swaroop, purchased Pressure Cooking Equipment, consisting of Gas chuhla and Regulator for Rs.2369/- each, including VAT charges after obtaining quotations from M/s Rasoi Gas, Tohana, which was not an approved source of Haryana Govt. whereas the approximate cost of the above equipment is only Rs.1300/-.*
- 2. That Sh. Hari Swaroop violated the instructions issued by Finance Deptt. Haryana and caused a loss of Rs.75,600/- to the State Exchequer of Haryana and that the Chulas purchased were not ISI marked.”*

The response filed by the petitioner to the charge sheet having been found unsatisfactory, Sh. R.K. Verma, IAS (retired) was appointed as the Inquiry Officer.

The inquiry proceedings culminated in the furnishing of an inquiry report dated 10.05.2010 (Annexure P-3) absolving the petitioner of the charges. The Disciplinary Authority, however, disagreed with the findings of the Inquiry Officer and recorded a dissenting note dated 30.09.2011. The dissenting note was served upon the petitioner and to which, he submitted a representation dated 02.12.2011. Vide order dated 16.03.2012 (Annexure P-7), a punishment of stoppage of one grade increment with cumulative effect was imposed upon the petitioner. The petitioner being aggrieved preferred a memorial to the Governor of State of Haryana. Such memorial stands partly accepted and resulting in the issuance of the impugned order dated 21.02.2014 (Annexure P-9), whereby the punishment stands reduced to stoppage of one grade increment without cumulative effect.

Mr. B.S. Rathee, learned counsel appearing for the petitioner would argue that order of punishment cannot sustain on the sole ground that in pursuance to a regular departmental inquiry, the charges levelled against the petitioner had not been proved and as such, there could be no basis for imposing any punishment whatsoever. Even delving into the charges and accusations against the petitioner, it was contended that the Purchase Committee for purchase of cooking equipment of which the petitioner was a member had been constituted only on 21.03.2007 whereas the quotations for purchase of such cooking equipment had been collected by the then B.E.O., Tohana on 17.03.2007 i.e. prior in point of time. It is argued that in the light of such glaring factual position, no responsibility and lapse could be fastened upon the petitioner and which could justify the imposition of punishment of stoppage of one annual grade increment without cumulative effect. A plea of violation of the principles of natural justice has also been raised by contending that the dissenting note recorded by the Disciplinary Authority while disagreeing with the findings of the Inquiry Officer does not record any reasons for such disagreement on the individual charges that had been framed. The action is said to be arbitrary as the respondent/ authorities have not taken into account the fact that the petitioner had an unblemished record of service.

Per contra, learned State counsel would submit that before inflicting the minor punishment, petitioner had been given full opportunity to put forward his defence and the entire procedure prescribed under the Rules had been followed. It is further submitted that the contentions raised by the petitioner already stand considered and dealt with inasmuch as the punishment initially imposed upon the petitioner stands reduced to a minor

punishment of stoppage of one annual grade increment without cumulative effect and under such circumstances, no interference is called for.

Counsel for the parties have been heard and the pleadings on record have been perused.

The principles governing the scope and extent of judicial review in matters of imposition of punishment at the hands of the Disciplinary Authority upon an employee are by now well settled. This Court can be justified in exercising the power of judicial review only upon recording satisfaction that the order passed by the authority suffers from any patent illegality, irrationality or any procedural impropriety. In ***B.C. Chaturvedi Versus Union of India, 1996 (1) SCT 617***, the Hon'ble Supreme Court observed that in exercise of powers of judicial review, the Court cannot 'normally' substitute its own conclusion or penalty. It is only, if the penalty imposed by the Competent Authority 'shocks the conscience' of the Court then it would be appropriate to mould the relief either directing the authority to reconsider the punishment imposed and in exceptional and rare cases, in order to shorten the litigation, itself impose appropriate punishment with cogent reasons in support thereof. It is also by now well settled that this Court while exercising its powers under Article 226 of the Constitution of India and while dealing with disciplinary proceedings and the final orders passed in culmination thereof, is to ensure that the employee has received a fair treatment and not to ensure that the conclusion which the authority has reached is necessarily correct in the eyes of the Court.

The validity and correctness of the impugned order dated 21.02.2014 at Annexure P-9 would now require examination in the light of such settled principles.

At the outset, it may be noticed that the charges pressed against the petitioner were that in the capacity of being a member of Purchase Committee certain cooking equipment was purchased from a source which was not approved by the State Government and thereby causing a loss of Rs.75,600/- to the State Exchequer. Another limb of the charge was that such cooking equipment that had been purchased was not even ISI marked. The reply submitted by the petitioner to the charge sheet dated 21.07.2009 has been placed on record and appended as Annexure P-2. Perusal thereof would reveal that even though a defence had been taken that quotations with regard to cooking equipment had been invited and collected by the then B.E.O., Tohana on 17.03.2007 whereas the Purchase Committee had been constituted only on 21.03.2007, yet in the reply itself, petitioner has stated that as a member of the Purchase Committee, he had been associated with regard to inspection of the cooking equipment. Petitioner has conceded in the reply in specific terms that while conducting inspection, the specifications, quality and parts of the LPG *Bhatti* were checked by him as a member of the Committee. Reply also reveals that the decision of purchasing of *Bhatti* instead of LPG *Chulah* had been taken in view of the fact that the *chulahs* were not useful and effective for preparation of Mid Day Meals for 100-200 students. It was also asserted in the reply that the LPG *Bhattis* that were purchased and supplied by the vendor were of first quality and the proof of the same is that even though they were purchased two years back still there was no complaint as regards their functioning. As regards purchase of equipment which was not ISI marked, a justification was put forth in the reply that since ISI marked equipment was not available at Tohana, as such, the purchase was judiciously effected by the Committee

as the process of purchase of cooking equipment was to be completed within a specified period and for the benefits of the schools. On the strength of such defence, it was pleaded by the petitioner in the reply to the charge sheet that the decision of the Committee may not be treated as violative of Government instructions with regard to purchase of ISI marked equipment only.

What clearly emerges from the defence set up by the petitioner himself in the reply to the charge sheet is that even though the quotations for cooking equipment may have been invited and collected prior to constitution of the Purchase Committee, yet the petitioner played a vital role as a member of the Purchase Committee at the time of inspection of the equipment purchase as also with regard to purchasing LPG *Bhattis* instead of LPG *Chulahs*. Petitioner also concededly as a member of the Purchase Committee participated in the decision to purchase cooking equipment which was not ISI marked. Under such circumstances, it would not be open for the petitioner to contend that the entire purchase of the cooking equipment was done solely by the then B.E.O., Tohana and the petitioner was just made to sign certain proceedings as a subordinate official. The petitioner after all was holding the post of Head Master at the relevant point of time. It was always open for the petitioner to have raised an objection with regard to purchase of certain cooking equipment, if it was not ISI marked or when it was being procured from a source which was not approved by the State Government. Mr. Rathee, learned counsel appearing for the petitioner has not been able to advert to any objection raised by the petitioner at any point of time as regards the purchase of cooking equipment in question and which formed the basis of the charge sheet served upon him.

This Court finds that even the heavy reliance placed by the petitioner upon the inquiry report dated 10.05.2010 (Annexure P-3) as regards having been exonerated is misplaced. The concluding part of the inquiry report clearly states that Government instructions in purchasing the equipment without ISI mark have been violated by the members of the Purchase Committee but certain mitigating factors have been taken notice of i.e. requirement of gas *bhattis* instead of gas *chulahs*, the time constraint in purchasing the gas and the proper functioning without any defect till date, in holding the charges to be not proved. Suffice it to observe that the conclusion drawn by the Inquiry Officer holding charges No.1 and 2 as not proved against the petitioner may be taken also as a misnomer as opposed to the clear finding of Government instructions having been violated and cooking equipment without ISI mark having been purchased.

It goes without saying that the charge as regards violation of government instructions and purchase of non-ISI marked equipment would have to be seen in relation to a point of time when such purchase was actually effected. Merely for the reason that such equipment has functioned without complaint thereafter would not dilute the gravity of the charge.

The contention raised by counsel for the petitioner that the dissenting note dated 30.09.2011 recorded by the Disciplinary Authority while differing with the Inquiry Officer does not record reasons is without merit. The dissenting note reads in the following terms:

“No.Kw 5/25-2009 HRG-I(1) Dated, Chandigarh, the 30.09.2011

Sh. Hari Swaroop, the then Headmaster, Govt. High School Dangra (Fatehabad) now Principal Govt. Girls Sr. Sec. School Tohana (Fatehabad) was charge sheeted under rule-7 of the Haryana Civil Services (Punishment & Appeal Rules, 1987 vide office Memo No.Kw 5/25-09 HRG-I(1) dated

06.07.2009. He submitted reply to the charge sheet vide representation dated 21.07.2009 which was not found satisfactory and consequently Sh. R.K. Verma, IAS (Retd.) was appointed as Inquiry Officer to hold regular departmental enquiry vide office order No.Kw 5/25-09 HRG-I (1) dated 09.03.2010. The Inquiry Officer has submitted his enquiry report vide letter No. dated 14.05.2010. On careful consideration of the enquiry report and as well as all facts pertaining to the case, I disagree with the conclusion reached by the Inquiry Officer in respect of charges levelled against him and hold that these charges stand proved against him. A copy of the enquiry report and dissenting note is enclosed herewith.

I am provisionally of the opinion that before proceeding further in the matter, he is hereby given an opportunity to make a representation, if any which he may like to make in this connection, which shall be considered by the Government before proceeding further in the matter. Such representation, if any, should be made in writing and submitted direct to the undersigned within a period of one month from the date of issue this memo. It is further clarified that no extension of time shall be granted to him to submit his representation and he shall be required to submit the same within the mandatory period of time as provided in sub Rule (6) of Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987, failing which further action as per rules will be initiated against him.

Surina Rajan
Financial Commissioner and Principal Secretary to
Govt. Haryana, School Education Department,
Chandigarh

The basis on which the dissent has been recorded is contained in the dissenting note itself. What is crucial is that such dissenting note was duly served upon the petitioner and opportunity was granted to represent against the same. Even the memorial submitted by the petitioner has been

duly considered and the basic contention of the petitioner that the purchase process already stood initiated on 17.03.2007 as opposed to constitution of the Purchase Committee on 21.03.2007 and further that the petitioner being junior to the B.E.O. could not resist signing of the proceedings of the Committee being a member and a subordinate official have weighed with the respondent/authorities while partly accepting the plea of the petitioner and thereby reducing the punishment of stoppage of one grade increment with cumulative effect.

In the considered view of this Court and in the totality of the facts and circumstances, it is not a fit case which would call for interference while exercising the power of judicial review to interfere in the impugned order imposing a minor penalty. The impugned order dated 21.02.2014 at Annexure P-9 does not suffer from any patent illegality or procedural infirmity.

For the reasons recorded above, no interference is called for and the writ petition is dismissed.

02.12.2016

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

- | | | |
|-----|----------------------------|-----|
| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | Yes |