

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

LPA No. 481 of 2015 (O&M)

Date of decision : March 22, 2016

Ex-Sub Inspector Sube Singh

.....Appellant

Versus

State of Haryana and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MRS. JUSTICE LISA GILL**

Present: Ms. R.K. Malik, Senior Advocate with
Ms. Rimple Kadyan, Advocate
for the appellant.

Mr. Sudeep Mahajan, Addl. AG, Haryana.

Mahesh Grover, J.

C.M. No. 972 of 2015

For reasons stated in the application and arguments addressed, the application is allowed and delay of 215 days in filing of the appeal is condoned.

LPA No. 481 of 2015 (O&M)

This is an appeal directed against the judgment of the learned Single Judge dismissing the writ petition filed by the appellant in limine. The appellant faced allegations of taking illegal gratification leading to initiation of regular departmental inquiry where on the basis of evidence/material the appellant was exonerated. The punishing authority agreed with the findings of the inquiry officer but

a disagreement note was recorded by the Inspector General of Police leading to the order dated 18.07.2012 (Annexure P-9), where it was recorded that since PW6 and PW7 (witnesses before the inquiry officer) in their statements brought out the fact of the appellant receiving illegal gratification of ₹80,000/- though returned to the Panchayat, subsequently was sufficient to conclude the appellant's involvement. A punishment of 25% cut in pension was, thus, awarded to him. This order was passed by the very same authority, who had recorded the disagreement note. It is, however, not clear as to how this authority recorded these findings or in what proceedings particularly once the punishing authority had concurred with the findings of the inquiry officer.

The appellant challenges this order before the appellate authority where order dated 07.03.2014 (Annexure P-11), was passed rejecting his contention to uphold the punishment of 25% cut in pension.

The appellant had questioned both the orders dated 18.07.2012 (Annexure P-9) and 07.03.2014 (Annexure P-11) before the writ court where the learned Single Judge declined to interfere.

Learned counsel for the appellant contends that the impugned orders before the writ suffered from a defect of non-application of mind as none of the pleas raised by the appellant have been considered besides no reasons have been given to discard the findings of the inquiry officer and merely mentioning the statements of two witnesses without co-relating them to the other substantive material on record, no conclusion about the guilt of the appellant

could ever have been recorded.

The prayer is opposed by learned counsel for the respondent, who justifies the imposition of the penalty and order of the appellate authority.

We have heard learned counsel for the parties and have perused the impugned judgment and also the related material on record. A perusal of Annexures P-9 and P-11 would lead to an irresistible conclusion that it was passed without appreciating the material on record and reveal a deficit of reasoning. A perusal of Annexure P-9 particularly would suggest a contradiction of sorts, suggesting complete non-application of mind. The appellate authority records as follows:

“The case against the appellant has been fully proved on the evidence of PWs.”

This observation is contrary to record as the inquiry officer had exonerated him. Therefore, if the appellate authority wanted to reason against the possible erroneous finding of the inquiry officer, it should have given reasons in detail by referring to the statements of the PWs to shatter the conclusion. Apart from that it has been recorded in the very same order that the inquiry was conducted in accordance with established procedure and there was no legal infirmity. If that be so, there was no occasion for the appellate authority to interfere with the findings of the inquiry officer unless substantive reasoning was reflected in the very same order. We, thus, have no hesitation to conclude that the impugned orders in the writ petition were clearly unsustainable in law and since these issues

have not been specifically dealt with by the learned Single Judge, we would conclude in favour of the appellant to set aside the orders of the learned Single Judge.

As we have commented and opined on the orders impugned in writ petition dated 18.07.2012 (Annexure P-9) and 07.03.2014 (Annexure P-11), we would remit the matter back to the appellate authority to reconsider the whole issue.

The appeal stands allowed in the aforesaid terms.

(Mahesh Grover)
Judge

(Lisa Gill)
Judge

March 22, 2016
rts