

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

CWP No. 2459 of 1996

Date of decision: 28.04.2017

Manohar Lal

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. Vipin Mahajan, Advocate,
for the petitioner.

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

JAISHREE THAKUR, J.

1. This writ petition has been filed seeking to challenge the order dated 09.02.1993 (Annexure P-9) by which the petitioner has been compulsorily retired from service along with imposition of fine and order dated 06.12.1995 dismissing the appeal.

2. In brief, the facts are that the petitioner was appointed as Inspector in the Food and Supplies Department on 25.6.1977 and thereafter in the year 1981 he was transferred to Longowal Centre in District Sangrur and while taking charge of the stock the petitioner gave a remark "stock is damaged". Thereafter, the petitioner was transferred out of Sangrur to Chular Barrier and he handed over the charge of all the 28 Godowns to one Sh. Natha Singh, Inspector on 18.05.1982. Sh. Natha Singh received charge of all the above Godowns and all other items lying therein as per Annexure P-1. Thereafter, FIR No. 106 was registered on 10.08.1982 under Section

411 read with Section 109 IPC at Police Station Longowal that 378 bags of

wheat stolen from Godown of Food and Supplies department were found lying in the shop of one Commission Agent at Longowal and that these bags came from Godown No.1 of Longowal. The petitioner was suspended by order dated 19.08.1982 but thereafter reinstated on 25.08.1983 and posted at Hoshiarpur. In the said FIR, challan was put up before the Judicial Magistrate Ist Class, Sangrur and on conclusion of the trial, the petitioner was acquitted in the above mentioned FIR. The JMIC held that on physical verification of the bags left in the Godown No.1 which were sealed by the police, the actual shortage of 93 bags was found. The JMIC while delivering the judgment relied upon the record produced by the petitioner to show that he had handed over the charge to Sh. Natha Singh on 18.05.1982 as well as on the statement of Chowkidar of Godown No.1 who deposed that Sh. Natha Singh was the Incharge of the Godown at the relevant time. After acquittal, the petitioner was again suspended on 09.07.1987 and served with a charge-sheet on 10.05.1988 in which allegations were leveled against the petitioner that wheat in the Godowns which were under his supervision was found less in quantity to the tune of about 2600 quintals for the crops of the year 1980-81 and 1981-82 and that he delayed the handing over of the charge of the Godowns, he did not take any initiative to dispose of the stocks. A detailed reply was given to the charge-sheet bringing it to the notice of the department that charge had been handed over to Sh. Natha Singh on 18.05.1982 while also mentioning that he stood acquitted in the criminal case. In the reply, it was also mentioned that when he took over the charge of the Godowns in which crops of the year 1980-81 were lying from Sh. Lal Singh, Inspector, the petitioner had mentioned while taking charge that since the crop of the year 1980-81 was lying in 3364 bags was found in

bad shape and the stock was infested with pests. It was also brought to the notice of the authorities that he had addressed several letters regarding the health of the stocks and immediate action should be taken for the disposal of the same. The Inquiry Officer held the petitioner guilty and thereafter the petitioner was ordered to be compulsorily retired from service by order dated 9.2.1993 along with imposition of fine. The appeal filed was rejected which led to the filing of a writ petition No. 8068 of 1995 in this Court. The High Court by order dated 10.10.1995 quashed the order passed by the Appellate Authority and remanded the matter back for reconsideration. The Appellate Authority reconsidered the matter and upheld the order of punishment. Aggrieved, the instant writ petition has been filed.

3. Mr. Vipin Mahajan, learned counsel for the petitioner would contend that after the matter was remanded back, the Appellate Authority was required to deal with the objections raised by the petitioner in all aspects which has not been done. In the appeal, it had been contended that the petitioner had not been supplied with documents and this objection had been raised before the Inquiry Officer itself and without dealing with the objection, the Inquiry Officer had held the petitioner guilty. It is further argued that even the Appellate Authority has not dealt with this issue regarding non-supply of documents. It is further submitted that the petitioner in fact had handed over the charge to Sh. Natha Singh on 18.05.1982 but still a Departmental Committee was formed for physical verification of the stock that too without associating the petitioner. The Committee gave a report and held that there was shortage of 93 bags in Godown No.1 and also that bags of wheat were less in quantity in Godown namely 80, 117, 118 and Station Godown. It is contended that the report of

the Departmental Committee, wherein the petitioner had been held responsible for shortage of stocks in the abovementioned Godowns, was never supplied to the petitioner. It is also argued that once proceedings in the FIR came to the conclusion that the petitioner had already given the charge of all the Godowns to Sh. Natha Singh, there would be no occasion for the Inquiry Officer to hold that there was a shortage of stocks which could be attributed to the petitioner. It is submitted that the inquiry and the order of punishment itself is vitiated on the point of discrimination. Along with the petitioner- one Sh. Manohar Lal Gudwani, Assistant Food and Supplies Officer, Longowal and Sh. Natha Singh, Inspector were also charge-sheeted for deficiency in wheat shortage to the tune of 7288 quintals and 2034 quintals respectively but these officers were let off by holding that while storing wheat stocks, there was a labour problem at the rail head at Sangrur and, therefore, the stock could not be disposed of in time. It is contended that the petitioner too was posted at the same station and facing the same problems as the other two officials, however, he has been victimised and held guilty of shortage of wheat of 2600 quintals. It is also argued that the petitioner was posted at Longowal in the year 1982 and the instant charge-sheet has been served on 10.05.1988 after a delay of seven years which itself is unsustainable.

4. Per contra, learned counsel appearing on behalf of the State would argue that the Inquiry Officer had held a detailed inquiry and had come to the conclusion that the petitioner had misappropriated 2600 quintals of wheat for his personal motive.

5. I have heard learned counsel for the petitioner and the learned

Addl. A.G., Punjab.

6. The petitioner herein after being acquitted in proceedings under FIR No. 106 registered under Section 411 read with Section 109 IPC at Police Station Longowal, was thereafter served with a charge-sheet dated 10.5.1988 wherein there were nine charges leveled against the petitioner. He was found guilty by the Inquiry Officer primarily on the report of the Departmental Committee that had conducted an inspection into the godowns regarding shortage. He was ordered to be retired compulsorily along with a recovery to be effected of Rs. 533703.60ps by way of a civil suit. The petitioner had filed a detailed appeal against the impugned order compulsory retirement from service and imposition of recovery but the Appellate Authority has not dealt with any of the issues raised by the petitioner in his appeal.

7. A categorical stand had been taken by the petitioner that the Inquiry Officer had relied upon the report of the Departmental Committee which was never made available to the petitioner despite a specific request having been made. It became incumbent upon the department to have supplied the Departmental Committee report especially since the verification of wheat bags had been done on 21.10.1982, in the absence of the petitioner and that too when he had already handed over charge to Sh. Natha Singh as reflected in Annexures P-1, P-2 and mentioned in the order of the JMIC, Sangrur. The said report was not made available to the petitioner and any report prepared without associating the petitioner, or supplying a copy thereof could not be relied upon. The issue that the petitioner had already handed over the charge of the Godowns to Natha Singh on 18.5.1982 as has been noted by the JMIC while exonerating the petitioner has not been dealt with by the Appellate Authority. The

contention raised that when the petitioner had taken over charge of the Godown in which crop for the year 1980-1981 was lying from one Lal Singh, Inspector, the petitioner had mentioned that 3364 bags were lying in a bad shape and the stock was infected with pests, has again not been dealt with. Furthermore, as far as charge No.2 is concerned, there was a shortage of 160 bags of wheat. In fact a perusal of Annexure A, supplied to the petitioner with the charge-sheet, would show that in 19 Godowns shortage is shown to be 158.20 quintals whereas in the remaining three godowns there is excess of 150 quintals. Meaning thereby there is actually only a shortage of 8 quintals of wheat. This fact has not been looked into while holding the petitioner guilty of misappropriation of 160 bags and imposing a recover of Rs. 5,33,703.60.

8. It is also noted that one Sh. Manohar Lal Gudwani who was charge-sheeted under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules along with the petitioner were let off by the Inquiry Officer on the ground that shortage in wheat stocks occurred due to labour problem at railhead, which benefit was denied to the petitioner though posted at the same station. Moreover, it can also be seen that the authorities themselves in the matter of Sh. Manohar Lal Gudwani who was also charge sheeted along with the petitioner, and a joint inquiry was held, had come to the conclusion that wheat had been damaged on account of pests (sursiri). A penalty was imposed of recovery of Rs. 11,57,390.98ps to be recovered by imposing a cut of Rs. 1,000/- per month. This was acknowledged to be so on account of the fact that there was no adequate medicine provided to the officials concerned to maintain proper storage. The punishment awarded to the petitioner suffers from the voice of discrimination.

9. Though the law in this regard is well settled that the High Court while exercising writ jurisdiction cannot sit as an Appellate Authority when there is some discrepancy found in the decision making process there can certainly be interference by the court in writ jurisdiction. When it is brought to the notice of the Court that the matter has not been dealt with in its true perspective by dealing with all issues raised, the High Court can interfere to ensure justice between the parties.

10. In a case as reported in ***Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Ors. (2006) 4 SCC 713*** while deciding a matter pertaining to dismissal from service of an delinquent employee despite a Civil Court returning a finding that no fault could be attributed to him held that the findings of the Civil Court must be dealt with *“The judgment of the Civil Court being inter parties was relevant. The conduct of the appellant as noticed by the civil court was also relevant. The fact that the respondent has accepted the said judgment and acted upon it would be a relevant fact. The authority considering the memorial could have justifiably come to a different conclusion having regard to the findings of the Civil Court. But, it did apply its mind. It could have for one reason or the other refused to take the subsequent event into consideration, but as he had a discretion in the matter, he was bound to consider the said question. He was required to show that he applied his mind to the relevant facts He could not have without expressing his mind simply ignored the same.”(emphasis supplied.)* The appellate authority was required to deal with all the issues as raised by the petitioner in the appeal which consideration is lacking. A specific plea had been taken by the petitioner that in proceedings before the JMIC, the trial court had noted that charge had been handed over to

Sh. Natha Singh and the petitioner stood exonerated. No appeal had been filed against the order of the JMIC meaning thereby that the finding had become final between the Department and the petitioner. This issue ought to have been dealt with by the Appellate Authority which has not been done reflecting that the appeal had been decided in a cursory manner. The entire case of the respondents rests on the report of the Departmental Committee prepared without associating the petitioner in the said proceedings. That in the inquiry proceedings against the petitioner in the instant case, the refusal to furnish a copy of the report of the Departmental Committee would tantamount to denial of a reasonable opportunity to him, to defend himself effectively against the contentions and arguments of the prosecution, and therefore, a violation of principles of natural justice.

11. It is also seen that by order of punishment the petitioner was not only compulsorily retired from service but recovery of an amount of Rs.5,33,703.60ps was also imposed upon him by way of a civil suit. Infliction of two punishments by the same order, namely, one minor penalty of recovery of the pecuniary loss caused to the Department, and the other being a major penalty of order of compulsory retirement would tantamount to a case of double jeopardy and such an order is not justified. The order imposing the punishment would not be sustainable in light of the judgement rendered in ***Union Of India Versus SC Parahar, 2006 (3) SCC 167*** and on a judgement rendered in ***Naveen Kumar versus Punjab and Haryana High Court, 2011 (1) SLR 115*** as well as judgement rendered in ***Punjab State Cooperative Supply and Marketing Federation Ltd. Vs. Gurdarshan Pal Singh Bahia, LPA No. 1524 of 2011*** wherein it has been held that a disciplinary authority has no jurisdiction to impose both minor and major

penalty by the same order. In **SC Parahar** case (supra) para 12 reads as under :-

“12. The penalty imposed upon the respondent is an amalgam of minor penalty and major penalty. The respondent has been inflicted with three penalties: (1) reduction to the minimum of the timescale of pay for a period of three years with cumulative effect; (2) loss of seniority; and (3) recovery of 25% of the loss incurred by the Government to the tune of Rs 74,341.89p. i.e. Rs 18,585.47p. on account of damage to the Gypsy in 18 (eighteen) equal monthly instalments. Whereas reduction of timescale of pay with cumulative effect is a major penalty within the meaning of clause (v) of Rule 11 of the CCS Rules, loss of seniority and recovery of amount would come within the purview of minor penalty, as envisaged by clauses (iii) and (iii)(a) thereof. The disciplinary authority, therefore, in our opinion acted illegally and without jurisdiction in imposing both minor and major penalties by the same order. Such a course of action could not have been taken in law.”

12. For the foregoing reasons, the impugned order dated 9.2.1993 (Annexure P-9) by which the petitioner has been compulsorily retired from service as well as the order dated 06.12.1995 dismissing the appeal cannot be sustained in law, which are accordingly set aside. Although, the consequence of setting aside of the said orders would have been to remit the matter back to the disciplinary authority for consideration of the matter afresh on merit, but having regard to the fact that the disciplinary proceedings were initiated against the petitioner as far back in 1993, this Court refrains from doing so. The petitioner indisputably has already suffered a lot. The Hon'ble Supreme Court in a number of judgments has held that in exceptional and rare cases and to shorten litigation, the Courts or the Tribunal can also impose an appropriate punishment by recording

cogent reasons in support thereof. These observations have been made while examining the quantum of punishment imposed by the disciplinary authority or the Appellate Authority in the light of ***Wednesbury's Principle*** in ***Damoh Panna Sagar Rural Regional Bank vs. Munna Lai Jain***, reported as 2005 (1) SLR 599 (SC). After examining in detail various judgments Hon'ble the Supreme Court has stated as under:—

“15. To put differently 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 litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a 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.”

13. Again the Supreme court in ***V. Ramana v. A.P.S.R.T.C.*** reported as 2005 (5) SLR 752 (SC) has stated as hereunder :-

*“11. The common thread running through in all these decisions is 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 what has been stated in the *Wednesbury's* case (supra) 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.*

12. To put differently 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 litigations it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof. In a 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.”

14. However, the question which arises is what relief should be granted to the petitioner. Since this court has already held that the impugned orders are vitiated as being against law, the question now remains as to whether or not the present case falls in the class of an exceptional and rare cases where to shorten the litigation, a appropriate punishment can be imposed by this Court by recording cogent reasons. In this regard the following facts are relevant:—

- (i) The petitioner has been agitating for the last two and a half decade's and now would be close to 60 years of age.
- (ii) Report of the Departmental Committee which was the basis of holding the petitioner guilty was never supplied to the petitioner nor was he associated with it.
- (iii) The petitioner had raised specific pleas in the appeal against the punishment order, the inquiry report which issues have not been dealt with by the appellate authority.
- (iv) That the petitioner stood exonerated by the JMIC in proceedings initiated under the FIR, while holding that the petitioner was not in charge of the godown and had handed over charge to Sh. Natha Singh. No appeal had

been filed against the said findings which attained finality between the petitioner and the Department. The Appellate Authority while rejecting the appeal has not taken note of this fact despite an issue having been raised. As per the judgement rendered in **Narinder Mohan Arya** case (supra), the appellate authority was required to deal with this issue and give of cogent reason for disagreeing with the same, which admittedly has not been dealt with in the instant case.

- (v) The order of punishment inflicted the petitioner with both major and minor penalty which is unsustainable in law.
- (vi) That Manohar Lal Gudwani was charge sheeted along with the petitioner for dereliction of duty and damage to the wheat crop has been let off with a fine.

15. In view of the facts as afore-stated, I am of the opinion that to put a quietus to the matter, ends of justice would be met if the penalty of compulsory retirement along with fine of Rs. 533703.60 is converted into only an imposition of fine of Rs. 533703.60 as has been done in the case of Manohar Lal Gudwani and the order of compulsory retirement is set aside thereby reinstating him in service. However, on reinstatement the petitioner shall be entitled to only 50% of his salary for the period that he did not work till his retirement and thereafter will be entitled to full pension. Needless to mention that on reinstatement the petitioner will also be entitled to all consequential benefits that would flow from setting aside the order of compulsory retirement. The petitioner is, therefore, entitled to interest on

the delayed payment of retiral benefits at the rate of 6% per annum from date of retirement upto the date they are actually paid to him. Fine as assessed be deposited within a period of one month from receipt of certified copy of this order.

Writ petition stands allowed in the aforesaid terms.

28.04.2017

Satyawan

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes.
No.