

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

201

**RSA No.1500 of 1993 (O&M)
Date of Decision : 13.10.2017**

Sukhdev Raj

..... Appellant

Versus

Punjab State, through Secretary (Transport), Chandigarh

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. G.P.Vashisth, Advocate
for the appellant.

Mr. H.S.Sitta, Asstt. Advocate General, Punjab.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below dismissing the suit of the appellant challenging various punishment orders passed on him.

By order dated 07.09.1978 the appellant was imposed the punishment of stoppage of 2 increments with cumulative effect. By an order dated 13.11.1978 he was inflicted another punishment of stoppage of 2 increments with cumulative effect. One month later in December, 1978 he earned another punishment of stoppage of 4 increments with cumulative effect. One year later in December, 1979 one more order was passed stopping 2 increments of the appellant with cumulative effect. Similar order was passed in January, 1980 stopping one more increment and the last order was passed in March, 1983 whereby 6 increments were stopped with

The trial Court dismissed the suit in entirety holding that the necessary procedure had been followed before the punishments were imposed and also holding that the suit was beyond limitation. The appellate Court, however, came to the conclusion that all the orders were vitiated because major punishment had been imposed without holding inquiries but again dismissed the suit on the ground of limitation holding as follows :-

“In the case in hand, the orders were passed 6/7 years prior to the date of the filing of the suit and the increments were stopped and the plaintiff must have come to know when his increments were not sanctioned and no amount was paid to him due to stoppage of the increments. No doubt, the rule requires that an order has to be communicated in person or under registered post, but, if it appears that the plaintiff had come to know about the passing of the orders, then the plaintiff cannot take the plea that the orders were not communicated to him. ”

Learned counsel for the appellant has argued that this basis is flawed. As per him even if the period of limitation has to be determined from the date/s when the orders took effect (and thereby the appellant should have come to know about the punishment), it would be clear that after the first order of punishment of 07.09.1978, the earliest that the first increment which may have fallen due and would have to be stopped would have been 08.09.1978 and if it is considered that on 08.09.1978 the increment having not been granted the appellant should have come to know, the suit could have been filed on or before 07.09.1981. Likewise for the next increment which had to be withdrawn, the limitation would be 07.09.1982. For the first increment which had to be withdrawn under the

next punishment order of 13.11.1978 the limitation would expire in 1983 and for the 4th increment which would have been stopped the limitation would have expired in the year 1984. 4 increments were stopped in December, 1978 and the limitation for challenging the stoppage of these 4 increments would start in the year 1987, consequently, the suit (filed on 02.09.1987) as regards those punishments which were imposed on him after December, 1978 could not be barred by limitation even if it is held that it was not necessary to communicate an order of punishment the appellant should have come to know when the increment was not granted.

As regards those orders of punishment which were imposed in December, 1978 and the subsequent ones of December 1979 and January 1980 the learned Assistant Advocate General is not in a position to deny that though punishment was of stoppage of increments with cumulative effect yet no inquiry was held before the orders were passed and this is what has been held by the lower Appellate Court.

Resultantly, the different orders of December 1978, December 1979 and January 1980 whereby a total of 7 increments were stopped with cumulative effect are set aside and the findings of the lower Appellate Court to this effect are affirmed. As regards the punishment orders of 07.09.1978 and 13.11.1978, the finding of the lower Appellate Court on limitation is confirmed.

Learned Assistant Advocate General has argued that if this Court is setting aside these orders the matter should be remanded back to the disciplinary authority for taking fresh action in accordance with law, if so advised.

Learned counsel for the appellant, however, points out that these orders range from between 34 years ago to 39 years ago, the appellant has retired in 2006 and it would be highly unjust to now subject him to a fresh process of inquiry. In ***Union of India and another vs S.S.Ahluwalia, 2007(7) SCC 257***, the Hon'ble Supreme Court held as follows :-

“.... The scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is very limited. The Court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case, the Court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case, in order to avoid delay the court can itself impose lesser penalty.....”

Even though in that case the Supreme Court substituted the order of punishment but here the fact situation is that no inquiry at all has been held and consequently, it would not be possible for this Court to now substitute the punishment. Resultantly those punishments are set aside.

Coming now to the order passed in March 1983, the contention of learned Assistant Advocate General is that in that case the full procedure of regular inquiry was followed and the only allegation made by the appellant was that that order had been passed by an authority subordinate to the punishing authority and this fact has been accepted by the Appellate Court.

As regards this order, I deem it appropriate to remand the case back to the punishing authority from the stage of receipt of inquiry report. The punishing authority would now issue fresh notice to the appellant to show cause against the submission of inquiry report and thereafter proceed in accordance with law.

Let the necessary exercise be now concluded within a period of 6 months from the date of receipt of a certified copy of this order. In case this exercise is not completed within the aforesaid period and that delay is not attributable to the appellant the appellant would be entitled to recurring costs of Rs.10,000/- per month till such time as the order is passed.

Appeal stands disposed of in the above terms.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

(**AJAY TEWARI**)
JUDGE

13.10.2017

Pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No