

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

CWP No.18825 of 2015 (O&M)
Date of Decision: May 09, 2017

Sukhbir Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present:- Mr. Satnam Singh, Advocate
for the petitioner.

Mr. L.S. Virk, Addl. AG Punjab.

JAISHREE THAKUR, J.(Oral)

The petitioner herein is challenging the order dated 02.01.2008 (Annexure P-11) by which he has been removed from service as well as seeks to quash the order dated 19.11.2013 (Annexure P-15) by which the appeal preferred against the order of dismissal stands dismissed, with the prayer to convert the major punishment of removal from service to a lesser punishment, being disproportionate, as the petitioner had served for more than 24 years with the Department.

2. In brief, the facts are that the petitioner joined the Sewerage

Board as a Junior Engineer on 22.04.1981 and continued to serve up till 1983, when he was regularly appointed in the Irrigation Department by appointment letter dated 02.06.1983. On account of his meritorious service, he was thereafter promoted as Assistant Design Engineer on 09.01.2002. On account of family circumstances, the petitioner applied for ex-India leave from 20.05.2002 to 31.01.2003, which was duly sanctioned by the competent authority. While on leave, his mother fell ill and on that account, the petitioner asked for extension of ex-India leave from 01.02.2003 to 31.12.2003. The medical certificate of his mother, in support of the leave application, was also enclosed. The request was forwarded for sanction to the competent authority, which was not approved of. The petitioner was directed to join duty and he submitted his joining report. Since disciplinary proceedings had been initiated, the petitioner was allowed to re-join with the condition that the re-joining would not affect the disciplinary proceedings that had been initiated. The charge-sheet was issued under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, on the allegations of absent from duty w.e.f. 01.02.2003 to date i.e. the date of issuance of charge-sheet. The petitioner duly replied to the said charge-sheet, denying all the charges. The enquiry was held, wherein, the enquiry officer came to the conclusion that the petitioner was guilty of overstay. Thereafter, on the basis of the report of the enquiry officer, order of punishment of removal from service was issued on 02.01.2008. The appeal against the said order also came to be dismissed, after a direction was issued by this High Court, to decide the appeal.

3. Mr. Satnam Singh, learned counsel appearing on behalf of the

petitioner contends that the enquiry proceedings stands vitiated on account of the fact that no opportunity of hearing was given to the petitioner neither has it been noted that the petitioner had applied for extension of leave on the account that his mother was unwell. It is also argued that the petitioner has sought premature retirement on 16.12.2004, while the enquiry was pending and he had also deposited advance cheque of Rs.64,644/- towards three months' pay in advance, as required under the Rules and at best, the enquiry officer or the Appellate Authority ought to have considered the length of service rendered by the petitioner, before imposing the punishment of removal from service. It is further argued that the petitioner has an unblemished record and it is only on account of medical exigency of his mother that he overstayed his sanctioned leave. In fact, he had applied for extension of leave, which was not granted to him.

4. Per contra, Mr. L.S. Virk, learned Addl. AG appearing on behalf of the respondents-State submits that the petitioner was charge-sheeted under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 on 26.02.2004, on the allegations of absent from duty. The petitioner submitted his reply to the same. It is contended that the petitioner was given full opportunity to defend himself. The enquiry officer so appointed, issued several notices to the petitioner to attend the enquiry proceedings on 17.08.2004 and thereafter, on 31.08.2004, but these notices were returned undelivered from the postal authorities with the remarks "addressee left India, returned to sender". As abundant precaution, a public notice was issued by the enquiry officer, giving last opportunity to the petitioner to appear before the enquiry officer on 05.10.2004, failing which

ex parte proceedings would be held against him. Despite the said notice, the petitioner did not put in appearance, leading to the ex parte proceedings initiated against him, which was subsequently followed by the order of punishment.

5. I have heard learned counsel for the parties and with their assistance perused the record of the case.

6. Admittedly, the petitioner proceeded on leave, which was sanctioned up till 31.01.2003 and thereafter, the petitioner applied for extension of leave from 01.02.2003 to 31.12.2003 which was rejected by the appointing authority, which led to initiation of proceedings under Rule 8 of the Rules. Despite intimation and a public notice being issued, the petitioner did not join the enquiry proceedings before the enquiry officer, therefore, the impugned orders came to be passed. In the opinion of the court, there is no lacuna in the procedure that was followed, while holding the departmental enquiry/proceedings. It is expected from a person, who is in Government service, to discharge duties diligently and consciously and once leave is not sanctioned and employee is asked to rejoin duty, such orders should be complied with. The petitioner herein being a public servant has the enormous duty of discharging public functions and being on non-sanctioned leave, would definitely impede upon the work of general public. Therefore, while finding no infirmity in the orders so passed, the prayer of the counsel for the petitioner to set aside the order is hereby rejected.

7. Learned counsel for the petitioner in the alternative prays that while imposing the punishment of removal from service, the authorities

have not taken note of the fact that the petitioner has an unblemished career from 02.06.1983 and thereby almost 24 years of service to his credit and the punishing authority should have considered that the petitioner had completed 20 years' qualifying service and would be then entitled to retiral benefits and other pensionary benefits. In this regard, reliance has been placed upon judgment rendered in ***"Lal Chand Aggarwal (dead) through LRs vs. State of Haryana etc.,"*** 2015(4) SCT 319 and especially relied upon para 5, 6, 7 and 8 of the judgment which reads as under:-

“5. Faced with this situation, counsel for the petitioner has raised an alternative argument. He has stated that even on 5.11.1990, when the petitioner originally proceeded on sanctioned leave, he had 32 years of service to his credit, and prior to that his record was satisfactory and while passing the impugned order, the Punishing Authority did not even consider that he was entitled to pensionary benefits from the date of his initial absence. He has relied upon **State of Punjab and others v. Mohinder Singh (2005) 12 Supreme Court Cases 182** and **Ex. HC Rajender Singh v. Union of India and others, 2008(2) All India Services Law Journal 35**. In Mohinder Singh's case (supra), it was held as follows :-

“9. Counsel appearing for the respondent submitted that the order of dismissal may be converted into an order of compulsory retirement from service as the respondent has already put in more than 23 years of service. Counsel appearing for the appellants after taking instructions states that the case of the respondent would be considered sympathetically by the authorities if he moves an application for converting his order of dismissal into an order of compulsory retirement. Impugned orders

are set aside. The authorities however shall be at liberty to pass an appropriate order on the representation, if any, filed by the respondent for converting the order of dismissal into an order of compulsory retirement.”

6. In HC Rajender Singh's case (supra), it was held as follows :-

“..... The fact, however, remained that the petitioner had served for a long period and earned a valuable right to receive pension and other benefits for the rest of his life, which the petitioner would forfeit in case the punishment was, by way of dismissal. The Disciplinary, Appellate or Revisional Authorities do not appear to have kept in mind these aspects while directing dismissal of the petitioner. Dismissal from service of a person, who has not yet earned pension, may not be so harsh as is dismissal of one, who has already earned such a right. What makes the punishment unduly disproportionate and harsh is the forfeiture of rights which the delinquent has acquired by reason of his long service. Cutting short his tenure in the service may be one facet of the order of dismissal but more severe than that is the denial to him and his family sustenance for the rest of their lives. We are, therefore, of the considered opinion that the punishment by way of dismissal from service was, in the instant case, totally disproportionate to the gravity of the offence committed by the petitioner.”

7. Counsel for the respondents has argued that mere length of service can never be determinative in a disciplinary inquiry and just because a person has enough service to earn pension, does not mean that he cannot be dismissed or removed from service.

8. As a proposition of law, no body can have a quarrel with this argument. What counsel for the petitioner has stressed is that this aspect has not even been considered by the Punishing Authority. As regards the issue that the Punishing Authority was bound to consider this aspect, counsel for the respondents has not been able to cite any contrary judgment. In the circumstances, it has to be held that

the order removing the petitioner from service without considering his entitlement for pension is illegal.”

8. The argument as raised by learned counsel for the petitioner has merit. This fact has not been taken into consideration by the punishing authority or the appellate authority that the petitioner has completed 20 years of qualifying service. Moreover, during the pendency of the enquiry proceedings, the petitioner had sought premature retirement and even submitted the cheque in lieu of three months salary in advance. Despite that, by removing the petitioner from service, he had been denied of all the retiral benefits.

9. In a catena of cases, the Hon'ble Supreme Court has held that the scope of judicial review in the matter of imposition of penalty, as a result of disciplinary proceedings, is limited. A court can interfere with the punishment only if the same is shockingly disproportionate to the charges found to be true and it is in such eventuality that a court may interfere and remit the matter back to the disciplinary authority for re-consideration of the punishment. 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.....”

10. 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 2004, the Hon'ble Supreme Court in a number of judgments has held that 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 Lal Jain, reported as 2005 (1) SLR 599 (SC)**. Since the petitioner has already been put to prolonged litigation, the impugned order itself passed as far back as 2008, and petitioner has also completed his period of qualifying service, this court deems it appropriate to convert the punishment of the petitioner of removal from service to compulsory retirement. Resultantly, the petitioner would be deemed to have been compulsorily retired as on 02.01.2008.

11. In view of the above, the writ petition is being allowed to the extent that the order of removal from service is hereby converted to an order of compulsory retirement. The respondents herein are directed to release the retiral benefits of the petitioner within a period of four months from the date of receipt of certified copy of this order, along with interest @ 6% per annum, failing which the respondents would be liable to pay the interest @ 9% per annum thereafter.

12. The writ petition stands allowed in the aforesaid terms.

May 09, 2017
vijay saini

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No