

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

**CWP-27000-2013 (O&M)
Date of decision: 04.09.2017**

Balwant Singh

... Petitioner

Vs.

State of Punjab & others

... Respondents

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

Present: Mr. V.K. Shukla, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, Sr. DAG, Punjab.

...
TEJINDER SINGH DHINDSA, J.

Petitioner, who was serving as a Deputy Forest Ranger under the Department of Forest, State of Punjab, retired on 29.02.2012 upon attaining the age of superannuation.

Prior to his promotion as Deputy Forest Ranger and while serving on the post of Forester, regular departmental proceedings were initiated under the Punishment and Appeal Rules on the following articles of Charge:

“Charge No.1: *Causing loss to government property by getting trees felled illegally and in connivance with a Forest Guard, namely, Rajwinder Singh.*

Charge No.2: *Sluggish control on subordinate staff.*

Charge No.3: *Exercising negligence to the carelessness and dereliction in discharging duties.”*

The departmental proceedings finally culminated in the passing of the order dated 23.02.2011 (Annexure P-2) passed by the Forest Conservator, Ferozepur Circle, Ferozepur imposing upon the petitioner

recovery of Rs.2,50,160/- i.e. recovery @ 40% for illegal felling of 366 trees. Further penalty imposed was stoppage of three annual increments without cumulative effect for dereliction of duty. Appeal preferred against the order of penalty was rejected vide order dated 27.07.2011 (Annexure P-4) passed by the Chief Forest Conservator (Plains), Punjab, Mohali. Petitioner at that stage, preferred CWP No.649 of 2012 impugning the order of punishment dated 23.02.2011 as also the order passed by the Appellate Authority. The writ petition was allowed in part vide judgment dated 11.01.2012 at Annexure P-6 on the ground that an order of punishment which entailed adverse civil consequences has been dealt with by the Appellate Authority without assigning any reason and by passing a non speaking order. Accordingly, directions were issued to the Appellate Authority i.e. the Chief Conservator of Forest to decide the appeal of the petitioner afresh and in accordance with law.

In purported compliance of the directions issued by the writ Court, the appeal preferred by the petitioner has been dealt with vide order dated 26.09.2012 at Annexure P-6 and whereby the penalty imposed upon the petitioner stands enhanced and the punishment of reduction by three stages in the time scale of pay for a period of 5 years has been imposed.

It is towards impugning the order dated 26.09.2012 (Annexure P-6) passed by the Chief Conservator (Plains), Department of Forest, Punjab that the instant writ petition has been filed.

Counsel for the parties have been heard at length.

Brief facts noticed herein above are not disputed.

Rule 5 of the Punjab Civil Services (Punishment and Appeal)

Rules, 1970 (hereinafter to be referred to as 'the 1970 Rules') defines the

various penalties that may be imposed on a government servant. There can be no dispute that under Rule 5 (iii) and (iv), recovery from pay of an employee to make good the whole or part of the pecuniary loss caused by such employee to the Government as also withholding increment of pay without cumulative effect are defined as minor penalties. On the other hand, withholding of increments of pay with cumulative effect or reduction to a lower stage in the time scale of pay for a specified period is a major penalty under Rule 5(v).

Adverting back to the facts of the present case, the petitioner vide order dated 23.02.2011 (Annexure P-2) was imposed a minor penalty. The Appellate Authority in the light of the impugned order dated 26.09.2012 at Annexure P-6 has now imposed a major penalty. In other words, the penalty imposed upon the petitioner stands enhanced.

Rule 19 of the 1970 Rules regulates “**consideration of appeal**”.

Rule 19 would be relevant to the controversy at hand and is reproduced hereunder:

19. Consideration of appeal - (1) *In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of rule 4 and having regards to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.*

(2) *In the case of an appeal against an order imposed any of the penalties specified in Rule 5 or enhancing any penalty imposed under the said Rule, the appellate authority shall consider-*

(a). *Whether the procedure laid down in these rules has*

been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice;

(b) Whether the finding of the punishing authority are warranted by the evidence on the record; and

(c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or serve;

and pass orders-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(iii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that-

(i) the Commissioner shall be consulted in all cases where such consultation is necessary;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 5 and an inquiry under Rule 8 has not already been held in the case, the appellate authority shall, subject to the provision of rule 13, itself hold such inquiry or direct that such inquiry be held in accordance with the provision of Rule 8 and thereafter, on a consideration of the proceeding of such inquiry make such orders as it may deem fit;

(iii) if the enhanced penalty which the appellate authority propose to impose is one of the penalties specified in clauses (v) to (ix) of Rule 5 and an inquiry under Rule 8 has not already been held in the case, the appellate authority shall make such orders as it may deem fit; and

(iv) no orders imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity as far as may be in accordance with the provision of Rule 10 of making a representation against

such enhanced penalty.”

A perusal of the rule extracted herein above mandates the Appellate Authority to examine in the first instance as to whether the procedure laid down in the Rules for holding a departmental inquiry has been followed or not. If the procedure has not been followed, a decision has to be taken whether non compliance of the Rules has resulted in violation of the provisions of the Constitution or violation of justice. If such issue is decided against the delinquent then the Appellate Authority is obligated to examine the findings recorded by the Punishing Authority in the light of evidence available on record and to take a call whether such findings are supported by material available on record. Ultimately, the Appellate Authority has to decide whether the penalty imposed by the Punishing Authority is adequate or otherwise and then to pass a final order.

Under Rule 19(2), there is a proviso at sub clause (iv) which is categorical that no order imposing an enhanced penalty shall be made unless the appellant has been given a reasonable opportunity of making a representation against such enhanced penalty.

Learned State counsel at this stage would refer to the impugned order dated 26.09.2012 at Annexure P-6 to urge that prior to passing of such order, an opportunity of being heard in person had been afforded to the petitioner and which was availed of. It is contended that such opportunity of personal hearing having been granted, the mandate under the proviso (iv) of Rule 19(2) stands complied with.

Such submission is without merit. The language of the proviso (iv) of Rule 19(2) is couched in categorical and unambiguous terms. The safeguard of an opportunity to be granted to the appellant is in relation to

proposed enhanced penalty. In the present case, a punishment of recovery coupled with stoppage of three annual increments without cumulative effect stands enhanced to reduction by three stages in the time scale of pay for a period of 5 years. Concededly, no notice or opportunity was granted to the petitioner as regards such proposed enhanced penalty.

The impugned order clearly falls foul of Rule 19(2) proviso (iv). In taking such view, this Court would draw support from a Division Bench judgment of this Court in **Balwinder Singh Vs. state of Punjab & others, 1998 (4) RSJ 148** and wherein also, the scope and operation of Rule 19 of the 1970 Rules had been examined.

For the reasons recorded above, the order dated 26.09.2012 at Annexure P-6 passed by the Chief Conservator of Forest (Plains), Punjab is set aside.

Directions are issued to the Appellate Authority to decide the appeal preferred by the petitioner against the order of punishment dated 23.02.2011 at Annexure P-2 afresh and after giving an opportunity of hearing by passing a reasoned order and by following the mandate of Rule 19 of the 1970 Rules. Such exercise be completed within a period of 3 months from the date of receipt of a certified copy of this order.

Petition is allowed in the aforesaid terms.

04.09.2017

harjeet

**(TEJINDER SINGH DHINDSA)
JUDGE**

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| i) | Whether speaking/reasoned? | Yes |
| ii) | Whether reportable? | No |