

Sr. No.105

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.23928 of 2017 (O&M)

Date of Decision:21.11.2017

Dr. Arvind Kumar

... Petitioner

Versus

State of Punjab and others

... Respondents

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

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

TEJINDER SINGH DHINDSA, J.(ORAL)

As per pleadings on record, petitioner while serving on the post of Rural Veterinary Officer under the Department of Rural Development and Panchayats, State of Punjab was issued a charge-sheet dated 01.01.2014 and the precise Article of charge formulated against him was to the following effect:-

“For committing dereliction in duty by not vaccinating the animals under self supervision and for getting the animals vaccinated through the farmers.”

Challenge in the instant petition is to the order dated 26.03.2014 (Annexure P-14) passed by the Director Rural Development and Panchayats, Punjab imposing upon the petitioner the major penalty of stoppage of two annual increments with cumulative effect. Further challenge is to the order dated 25.09.2017 (Annexure P-18) passed by the Appellate Authority i.e. the Secretary, Department of Rural Development and Panchayats, State of Punjab affirming the major penalty imposed by the punishing authority.

Notice of motion,

On the asking of the Court, Ms. Monica Chhibber Sharma, Sr. DAG, Punjab accepts notice on behalf of the respondent authorities. A complete copy of the writ petition has been furnished to learned State counsel.

In the light of the order that I propose to pass that there would be no requirement of seeking a response on behalf of the State to the writ petition.

Perusal of the impugned order (Annexure P-14) imposing the major penalty of stoppage of two annual increments with cumulative effect would in itself show that departmental proceedings had been initiated against the petitioner in the light of a charge-sheet dated 01.01.2014 issued under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. The impugned order would also reflect that reply to the charge-sheet submitted by the petitioner was found to be not satisfactory and the major penalty has been imposed only upon consideration of the reply submitted by the petitioner and after affording to him an opportunity of personal hearing.

Petitioner filed an appeal against the order of penalty dated 10.07.2014 (Annexure P-15). Pleaded case of the petitioner is that he had also submitted a supplementary appeal/written submissions dated 19.09.2016 placed on record at Annexure P-15 (colly).

Since no decision was being taken on the appeal preferred by the petitioner, he was constrained to approach this Court by filing CWP No.23781 of 2016 and which was disposed of on 18.11.2016 (Annexure P-16) with a direction to the State Government to take a final decision on the appeal within a period of two months from the date of

receipt of a certified copy of the order.

In purported compliance of the directions issued by this Court, the impugned order dated 25.09.2017 at Annexure P-18 has been passed by the Appellate Authority affirming the major penalty imposed by the punishing authority.

In the considered view of this Court, there would be no requirement to go into the merits of the controversy.

In the appeal preferred by the petitioner as also in the supplementary appeal/written submissions apart from having raised other contentions/grounds, a specific ground has been raised that the procedure contemplated for imposition of a major penalty under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 has not been followed.

Needless to observe that the Punishment and Appeal Rules 1970 cast an obligation upon the punishing authority to hold a regular departmental inquiry and as per procedure defined under the relevant Rule prior to imposing a major penalty upon an employee. Major penalties have also been listed and defined under the Punishment and Appeal Rules 1970. Concededly, stoppage of two annual increments with cumulative effect is one of the major penalties duly defined.

The Appellate Authority has not even adverted to such legal submissions raised in the appeal as regards a regular inquiry having not been conducted and the procedure under the Punishment and Appeal Rules, 1970 having been given a go by much less having dealt with such submissions.

The appeal preferred by the petitioner against the imposition of the major penalty was towards exhausting a statutory remedy provided

under the Rules. The appeal preferred by an employee under such circumstances cannot be dealt with in a casual manner. It is not a mere formality. It was a statutory remedy available to the petitioner.

The Appellate Authority was bound under law to have passed a reasoned order while dealing with all the contentions and submissions that were raised by the petitioner in his appeal/supplementary appeal.

The same as would be discernible from the impugned order at Annexure P-18 has not been done.

There is yet another aspect of the matter which would require to be dealt with.

It so appears that one Harminder Singh had filed a complaint against the petitioner as regards dereliction of his duty. A preliminary inquiry is also stated to have been conducted on the complaint and in which statement of the present petitioner was recorded. The department having not proceeded further in the matter. Harminder Singh filed CWP No.24419 of 2013 and which was disposed of at the stage of preliminary hearing itself and without issuing notice in the following terms:-

“Having heard the learned counsel for the petitioner and without expressing any opinion on the merits of the case including the issue of limitation, if any, Director, Rural Development and Panchayats Department, Punjab-respondent No.2 is directed to look into the matter, consider the enquiry report (Annexure P-2) and ensure taking an appropriate action against respondent No.4 without any further loss of time and in any case within a period of three months from the date of receipt of a certified copy of this order. Secretary, Department of Animal Husbandry, Government of Punjab-respondent No.1 is also directed to consider the enquiry report dated 06.03.2013 (Annexure P-2) and the

complaint dated 28.02.2013 (Annexure P-1) so as to ensure granting of appropriate compensation to the petitioner to which he is found to be entitled at an early date but in any case within a period of three months from the date of receipt of a certified copy of this order.

With the observations made and directions issued as hereinabove, the present writ petition stands disposed of.”

It appears that Punishing Authority as also the Appellate Authority in the present case were swayed by the directions issued by the co-ordinate Bench in the order dated 08.11.2013 while disposing of CWP No.24419 of 2013 (Annexure P-11).

Be that as it may, suffice it to observe that the directions issued by this Court in the order dated 08.11.2013 can never be construed to mean that the procedure contemplated under the Punishment and Appeal Rules applicable to the petitioner for purposes of imposing a major penalty could have been by passed.

For the reasons recorded above, the instant petition is partly allowed. The order dated 25.09.2017 (Annexure P-18) passed by the Secretary, Department of Rural Development and Panchayats, State of Punjab is set aside. The matter is remanded back to the Appellate Authority to pass an order afresh in accordance with law and within a period of 03 months from the date of receipt of a certified copy of this order.

Keeping in view that this is the second round of litigation initiated by the petitioner, liberty is granted to the petitioner to furnish written submissions within a period of two weeks from today before the Appellate Authority.

In the eventuality of the petitioner doing so even such written submissions would be taken into account while passing the order afresh and

as has been directed.

Writ petition is disposed of in the aforesaid terms.

It is clarified that this Court while directing the Appellate Authority to pass an order afresh has not considered the case on merits.

21.11.2017

vandana

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	No