

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

RSA No.3885 of 2013 (O&M)

Date of Decision: 15 .2.2017

Ravinder Kumar Dogra

... Appellant

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.V.K.Jindal, Sr.Advocate with
Ms.Janya Sirdhi, Advocate for the petitioner

Mr.Indresh Goel, Addl.A.G., Haryana

....

RAJIV NARAIN RAINA, J.

CM No.10534-C of 2013

Delay of 46 days in filing the appeal is condoned for two reasons- (1) there is sufficient explanation for the delay and (2) substantial questions of law arise for consideration in this appeal as have been framed by this Court on 31st August, 2015, and therefore, the issues framed are debatable and deserve consideration.

In view of the above, CM is allowed. Delay of 46 days in filing the appeal is condoned.

RSA No.3885 of 2013 (O&M)

1. The following substantial questions were framed for answer:-

i) Whether the professional advice given by an
advocate/employee to the State under the three

circumstances mentioned in the charge be a subject of appraisal for departmental proceedings without proof of professional misconduct or complete lack of bona fides which would amount to corrupt practice?

ii) Whether the punishment awarded is justified under the facts and circumstances and not capricious and oppressive against a legal professional discharging his duty as a government servant?

2. To answer these questions, the record of the lower court in a service matter should not detain the court for any elaborate appraisal since the issues arise from an adverse administrative order passed against the appellant on 13th July, 2009 by the Financial Commissioner and Principal Secretary to Government of Haryana, Administration of Justice Department, Chandigarh awarding penalty of stoppage of four annual increments with permanent effect.

3. The punishment order is the result of a charge-sheet dated 14th October, 1999 served on plaintiff-appellant. The appellant is a Law Officer of the Government of Haryana serving in the capacity of Assistant District Attorney in the office of the Director Prosecution, Haryana, Panchkula.

4. Aggrieved by the punishment order, the appellant preferred Civil Suit No.780 of 2009 in the Court of Civil Judge (Junior Division), Karnal for declaration with consequential relief of mandatory injunction praying for setting aside the punishment order as illegal and arbitrary. The learned trial court dismissed the suit vide judgment and decree dated 22nd November, 2010. The first appellate court has dismissed the appeal with

costs by judgment dated 9th April, 2013. The appeal has been dismissed on

general propositions of law to the effect that Court does not sit as a court of appeal against the decision of the punishing authority if there is no violation of statutory rules or principles of justice. The learned courts have returned findings that there was an admission by the plaintiff in his defence that he did not oppose the bail application in case FIR No.796 dated 16th October, 1996. The enquiry was conducted as per procedure and the charges levelled against the plaintiff were proved. Thus, it cannot be said that enquiry was not conducted according to law. The learned appellate court held that there was no error in the judgment and decree of the trial court dismissing the suit filed by the plaintiff. The courts below have relied on several judgments of which reference is not necessary only to add heft to this order.

5. The plaintiff was proceeded against departmentally under Rule 7 of the Punishment and Appeal Rules. The charges levelled were as follows:-

“1,That he did not oppose the bail application of V.N.Mohan in case FIR No.796 dated 16.10.1996 under Section 61/53 of the Punjab Excise Act, P.S.Sadar Karnal and also failed to submit his explanation for this lapse to the then District Attorney.

2.That in the civil case, titled “Harbans Lal versus State of Haryana, which was partly decreed and partly dismissed by the court of Smt. Meenakshi Girdhar, the then learned Additional Sr.Sub Judge, Karnal on 28.02.1995, he misled the Legal Remembrance and Secretary to Govt. Haryana by communicating directly that no further action was required although an appeal needed to have been commanded in the said case.

3.That in the civil suit “Amar Pal Versus Union of India” decided by Shri Nazar Singh”, the then learned

Civil Judge, Karnal on 31.01.1997, he did not press the issue of jurisdiction nor led any evidence on this issue.

4. That he examined Daljit Singh, complainant in the case "State Versus Jeet Singh" under Section 380 IPC in FIR No.557, dated 09.08.1991, P.S.City, Karnal without producing the case property in the court.

5. That the lapses detailed above constitute grave misconduct on the part of plaintiff, Shri R.K.Dogra, Asstt. District Attorney, rendering him liable to strict disciplinary action."

6. To summarize the four charges of misconduct levelled against the appellant in a gist could be put like this: (1) that he did not oppose bail application of accused in case FIR No.796 dated 16.10.1996; (2) that he misled the Legal Remembrancer, Haryana with wrong opinion as District Attorney; (3) that he presented improper pleadings in Civil Suit- Amar Pal vs. Union of India; and (4) he allowed the examination of witnesses in the absence of case property in case FIR No.557 dated 9.8.1991.

7. In order to understand the nature of the four charges, the best way are to recapitulate the reasons explained by the plaintiff himself as a lawyer and Assistant District Attorney/Assistant Public Prosecutor in his reply Ex.D5 to the charge sheet [which is on record in this appeal as Annex. A-1] and they are best reproduced verbatim without paraphrasing them so as not to add any gloss. They read as under as under:-

"To

The Financial Commissioner & Principal
Secy. to Govt. Haryana, Admn. Of Justice
Department.

Reply of notice by Ravinder Kumar Dogra,
ADA, (Under Suspension) c/o Director Prosecution,
Haryana, Panchkula, for penalty of stoppage of four
annual increments with cumulative effect.

Your humble petitioner most respectfully submits as under:-

That at the very outset I submit that I was appointed as Assistant District Attorney in Prosecution Department, Haryana on 31-07-1992. During this almost 16 years period I have discharging my official duties honestly, sincerely and with utmost zeal of work.

My entire service record is unblemished. It is the first occasion when I am call upon to submit such like reply of said notice.

My allegations wise submission are as under:-

Charge No.1. Not opposed Bail Application of Accused in case FIR No. 796, dt.16-10-96.

i. The allegation was that Sh. V.N. Mohan, Factory Manager, Distt Patiala surrendered in the court of Sh. Mewa Singh, JMIC Karnal on 22-10-96. In this Charge, it is alleged that I did not oppose the bail application of Mr.V.N.Mohan in case F.I.R. No. 796, dated 16-10-1996, P.S.Sadar Karnal for the offence under Section 61/1/34 Ex.Act.

The department has examined PW-1 Bachan Lal Naib court and PW-2 Ishwar Singh Naib court.

It is humbly submitted that PW-1 Bachan Lal was not present in the court when the matter of FIR no. 796 was taken up for consideration of bail on 22.10.1996, by Sh. Mewa Singh Judicial Magistrate Ist Class, Karnal. As per the statement in Chief Ishwer Singh Naib court was attending the duty work of P.S.Sadar Karnal to which the said case was relating. In this way, the statement of PW-3, is wholly insignificant for this charge. In the cross examiantion he was on leave. Thus, the said statement is not worthy for any reliance.

ii. Another witness PW-4, Ishwer Singh has shown rightly evasive and casual approach by adopting the clever attitude so has not to reveal the truth. A perusal of his cross examination reveals that he has not replied in question put to him. All question have been ignored by him by showing the want of knowledge.

In this way PW-4 could not stand the touch stone of cross examination and is not worthy for reliance.

iii. In this regard it is submitted that the statement of PW-4 is wholly beyond his report Ex.PE. In his report dated 8.11.1996 this witness had only stated about discharge of duty by the ADA and nothing more.

iv. It is further submitted that during those days there was prohibition in state of Haryana. Mr. V.N.Mohan was manager of a liquor factory. The liquor was being supplied from Punjab to Delhi Government under required permit issued on 17.10.1996 and delivery was to be made within 2 days at Delhi Government.

In this regard the law for informing the escort through Haryana was already sent by the factory representatives to DETC Ambala. No recovery was effected from Mr. V.N.Mohan. The person from whom the recovery was effected was already released on bail during the working of another ADA.

In the aforesaid circumstances there was no cogent ground or reason available to P.P. to justify the opposing the bail application. It is further submitted that when the FIR has been held ground less by the Hon'ble High Court. It further fortify my aforesaid submissions and the allegations leveled against me is no more valuable to department.

Charge No. 2.Misled Legal Remembrancer, Haryana with wrong opinion as District Attorney:-

i The said suit was decided by Smt. Meenakshi Girdhar Additional Senior Sub Judge Karnal on 28.02.1995, in my opinion the case was not fit for filing any appeal. I had sent my opinion to worthy LR Haryana alongwith copy of judgment and decree. After through examination of the relevant record the LR office concurred with me that it was not fit case for appeal. The letter of Hon'ble LR Haryana is enclosed for your kind perusal.

ii. It is submitted that when the Hon'ble LR Haryana has endorsed my opinion that it was a fit case for appeal, no charge can be alleged against me on the ground that I did not prefer the appeal.

iii. The allegation that I mislead the LR office is wholly wrong. It is submitted that when the judgment was sent with my opinion there is no question of misleading. However, the LR Haryana is highly esteemed officer, who is more and more intelligent and more qualified than me or any other ADA. He cannot be misled by a ADA. LR is very experienced person. If he is confirming my view subsequently. I can not be charged by my department with the allegation that the oral appeal was misled.

iv. It is also submitted that the concerned department also did not request for filing the appeal nor the concerned department has objected the aforesaid judgment dated 28.02.1995 so far. It further shows that the judgment of the court was passed on the facts on record and was quite justified and there was no need to file the appeal.

v. It is also submitted that said Harbans Lal was retired from agriculture department on 29.2.1984 who had filed the suit for claiming the interest on the delayed payment of retiral benefits and the arrears of due salary. His claim of leave encashment was allowed on 6.10.1986 by the department and order

dated 8.11.1986 but despite thereof the payment was not made till 13.10.1988 the gratuity was paid in two parts to him on 30.08.1989 and 30.01.1990. Despite the order of F.C.Haryana dated 18.11.1987, the salary of the plaintiff was not paid. All these facts are given in para no. 3 of the judgment.

As per para no. 4 of the said judgement, State Government of Haryana and Director concerned department required DRDA Narnaul to initiate the pension case of Harbans Lal. In this way the arrears of complete salary were paid to said Harbans Lal during the pendency of the suit on 17.5.1991.

I argued the case in accordance with the facts pleaded by State Government and agriculture department as evident from para no. 4 of the judgement.

As per para no. 17 of the judgment after my argument the learned court has rejected the claim of the plaintiff for 7 days salary and the claim for 1.7.1980 to 29.3.1984 was also dismissed.

The court has passed the judgment in accordance with instruction of the Haryana Government filing of appeal against the same was not fit in my opinion because the Government Pleader cannot back out from the instructions of the State Government nor can he challenge the same in the trial court. Intimation of my opinion was also sent to the Director Agriculture Department Haryana who also did not raise any objection thereon. Y.R. Sachdeva head clerk as witness on this charge but strangely said Mr. Sachdeva has not been produced in the inquiry.

Charge No. 3: Improper pleadings in civil suit Amar Pal vs. Union of India.

i. That in this charge it is submitted that the aforesaid suit was wrongly decreed by the trial court on 31.7.1997 against which I had recommended this

judgement for filing of appeal. I have drafted the ground of appeal and accordingly the appeal was filed in the court of District Judge, Karnal. It is humbly department does not bring the evidence PP could not lead evidence. In the instant case there is no complaint by the department that any evidence was brought by it and that it was not produced in the court by me. There is no such allegation.

Charge no. 4:Examination of witnesses in the absence of case property in case FIR No. 557 dt. 9.8.91.

i. Under this charge it is humbly submitted that the production of the case property in the court is not duty of the public prosecutor. In every court a parokar is deputed by the police station who is responsible for the production of the case property with the assistance of Naib court of concerned court.

ii. Kindly see the cross examination of PW-1 Magno Ram ADA produced by the department. In answer to question no. 1 and 2 he has clearly stated that it is not the duty of PP to make the witnesses to read over the statements before entering in the court. He has also made it clear that production of case property is not duty of PP. Moreover, he has also clarify that the case property remains with the police MHC and it is the duty of Naib court and Parokar to produce the case property.

iii. Kindly see the statement of Daljit Singh complainant who appeared as PW-3 that case. In the court he has clearly stated that he had signed the relevant papers in the police station. This stand of the complainant in the court goes against the prosecution and he has attempted to bely hole case of prosecution and then he started crossing the PP.

2. It is also brought to your kind notice that the complainant has avoided the appearance during

inquiry and the adverse inference should be drawn against the department.

3. That the statement of PW-5 R.S.Sehrawat is also stand in this regular inquiry because he has simply conducted the preliminary inquiry without associating me therein and no opportunity of hearing was provided to me at that time. In this way, his report Ex.P-6 as well as the other documents Ex.P-16 to Ex.P-20, can not be read against me as per law.

4. That a perusal of the inquiry file reveals that the so-called complaint were kept by Shri H.R.Jani complainant with me for almost for an order without taking any action thereon and no explanation is coming forward from the side of complainant in this regard. Had the complainant been made at the alleged time bonafidely, the same would have been brought to my notice then and there.

5. It is, therefore, most respectfully prayed that the allegations leveled against me are false and baseless and I may kindly be exonerated from the charges and the notice under reply may kindly be filed. I shall be highly obliged.”

8. The appellant submits that the first charge is without any basis. It is alleged that the appellant did not oppose the bail application of accused V.N.Mohan, Factory Manager, Patiala who surrendered in the court of Sh. Mewa Singh, JMIC, Karnal on 22nd October, 1996 in case FIR No.796 dated 16th October, 1996. The appellant replied that PW-1 Bachan Lal, Naib Court was present in the court when the FIR No.796 was taken up for consideration of bail on 22nd October, 1996 by the JMIC, Karnal. The appellant further replied that during those days, there was prohibition clamped by the Haryana Government. The liquor was being supplied from

1996 and delivery was to be made within 2 days at Delhi Government. In this regard, the law for informing the escort through Haryana was already sent by the factory representatives to DETC, Ambala. No recovery was effected from accused V.N.Mohan. The person from whom the recovery was effected was already released on bail during the working of another ADA. As such, there was no cogent ground or reason available to Public Prosecutor to oppose the bail application and also replied that the FIR has been held groundless by the High Court. In these circumstances, this allegation is baseless.

9. So far as the second charge is concerned imputing that appellant misled the Legal Remembrancer, Haryana with a wrong legal opinion as District Attorney is also baseless. The appellant sent his opinion alongwith the judgment passed in the suit decided by Smt. Meenakshi Girdhar, Addl. Senior Sub Judge, Karnal that it was not a fit case for filing an appeal. The said opinion was endorsed by LR, Haryana and therefore, it is baseless to allege that the appellant misled the LR, Haryana.

10. So far as the third charge is concerned imputing that there were improper pleadings filed in Civil Suit (Amar Pal vs. Union of India), the appellant had suitably replied that the aforesaid suit was wrongly decreed by the trial court on 31st July, 1997 against which the appellant had recommended for filing appeal against the said judgment. The appellant drafted the grounds of appeal and accordingly the appeal was filed in the Court of the learned District Judge, Karnal. It is not the case that the department brought the evidence for tendering and the appellant failed to produce the same before the court. No evidence was brought by the Department and, therefore, the appellant could not produce the same before

11. So far as the fourth charge is concerned that examination of witnesses was conducted in the absence of case property in case FIR No.557 dated 9th August, 1991, the appellant replied that the production of the case property in the Court is not the duty of the Public Prosecutor. In every court, a Parokar is deputed by the Police Station who is responsible for the production of the case property with the assistance of the Naib Court attached to the Court concerned. Even the witnesses in their cross-examination had deposed that it is not the duty of the Public Prosecutor to make witnesses to read over the statements before entering in the court. The witnesses agreed that production of case property is not the duty of the Public Prosecutor. Case property remains with the Police MHC and it is the duty of Naib Court and Parokar to produce the case property. It is not the case that the appellant told them not to produce such evidence.

12. The reply given by the appellant is self-speaking and eminently demolishes the charges as not grounded to reality, the true facts and the decision taken by the appellant in the course of his duties. There is no allegation of corruption, graft or professional misconduct or complete lack of bonafides which amount to a corrupt practice. He tendered advice as a professional lawyer working for the State to the best of his judgment and ability. The nature and character of the charges are as such and the defence of the appellant being substantially in tune with guarding the profession of an advocate as a Government Pleader and Public Prosecutor which is best explained by the Supreme Court in D.P.Chadha v. Triyugi Narain Mishra and others, (2001) 2 SCC 221 and Union of India and others vs. J.Ahmed, AIR 1979 SC 1022. This case falls within those parameters. Mr V.K. Jindal, the learned senior counsel has placed strong

Supreme Court in paragraphs 21, 24 to 26 of the report. The same are reproduced:-

“21. A mere error of judgment or expression of a reasonable opinion or taking a stand on a doubtful or debatable issue of law is not a misconduct; the term takes its colour from the underlying intention. But at the same time misconduct is not necessarily something involving moral turpitude. It is a relative term to be construed by reference to the subject matter and the context wherein the term is called upon to be employed. A lawyer in discharging his professional assignment has a duty to his client, a duty to his opponent, a duty to the court, a duty to the society at large and a duty to himself. It needs a high degree of probity and poise to strike a balance and arrive at the place of righteous stand more so when there are conflicting claims. While discharging duty to the court, a lawyer should never knowingly be a party to any deception, design or fraud. While placing the law before the court a lawyer is at liberty to put forth a proposition and canvass the same to the best of his wits and ability so as to persuade an exposition which would serve the interest of his client so long as the issue is capable of that resolution by adopting a process of reasoning. However, a point of law well settled or admitting of no controversy must not be dragged into doubt solely with a view to confuse or mislead the Judge and thereby gaining an undue advantage to the client to which he may not be entitled. Such conduct of an advocate becomes worse when a view of the law canvassed by him is not only unsupportable in law but if accepted would damage the interest of the client and confer an illegitimate advantage on the opponent. In such a situation the wrong of the intention and impropriety of the conduct

is more than apparent. Professional misconduct is grave when it consists of betraying the confidence of a client and is gravest when it is a deliberate attempt at misleading the court or an attempt at practising deception or fraud on the court. The client places his faith and fortune in the hands of the counsel for the purpose of that case; the court places its confidence in the counsel in case after case and day after day. A client dissatisfied with his counsel may change him but the same is not with the court. And so the bondage of trust between the court and the counsel admits of no breaking.

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24. An advocate while discharging duty to his client, has a right to do every thing fearlessly and boldly that would advance the cause of his client. After all he has been engaged by his client to secure justice for him. A counsel need not make a concession merely because it would please the Judge. Yet a counsel, in his zeal to earn success for a client, need not step over the well defined limits or propriety, repute and justness. Independence and fearlessness are not licences of liberty to do anything in the court and to earn success to a client whatever be the cost and whatever be the sacrifice of professional norms.

25. A lawyer must not hesitate in telling the court the correct position of law when it is undisputed and admits of no exception. A view of the law settled by the ruling of a superior court or a binding precedent even if it does not serve the cause of his client, must be brought to the notice of court unhesitatingly. This obligation of a counsel flows from the confidence reposed by the court in the counsel appearing for any of the two sides. A counsel, being an officer of court,

shall apprise the Judge with the correct position of law whether for or against either party.

26. Mr. Justice Crampton, an Irish Judge, said in Queen Vs. OConnell, 7 Irish Law Reports, at page 313:

“The advocate is a representative but not a delegate. He gives to his client the benefit of his learning, his talents and his judgment; but all through he never forgets what he owes to himself and to others. He will not knowingly misstate the law, he will not wilfully misstate the facts, though it be to gain the case for his client. He will ever bear in mind that if he be an advocate of an individual and retained and remunerated often inadequately, for valuable services, yet he has a prior and perpetual retainer on behalf of truth and justice and there is no Crown or other license which in any case or for any party or purpose can discharge him from that primary and paramount retainer.”

13. Again, in *D.P.Chadha* (supra) in paragraph 27 the degree and standard of proof required against a lawyer acting professionally, facing a charge of misconduct which is a serious matter, as a verdict of guilt of professional misconduct may result in reprimand, suspension of license to practice, removal of name from the rolls of the Bar Council the Supreme Court held that: “...an allegation of misconduct has to be proved to the hilt. The evidence adduced should enable a finding being recorded without any element of reasonable doubt.” I see no reason why the same strict standard of proof should not apply in the case of an ADA/PP while working with the State Government. So long as his advice is tendered bona fide and the action taken in Court while discharging official duties was above board and

without an allegation of making private profit out of public office, the four charges cannot be sustained in the eyes of law.

14. I have reason to answer the first question framed by my learned predecessor in the affirmative in favour of the appellant and against the State. The charge-sheet itself is liable to be invalidated and the punishment order passed thereon after regular enquiry is entirely perverse, arbitrary and unconstitutional. In fact, this matter should have been dropped by the disciplinary authority on receipt of the reply reproduced above. Any reasonable person of ordinary intelligence reading the charges and the defence would not think that this is a case of misconduct which deserves full-fledged enquiry and consequential infliction of major punishment.

15. The next question is as to quantum of punishment and whether is just and meet to the gravity of the “proved” misconduct. The answer is shortly put and a priori that if there is no misconduct, there can be no punishment. Even if there was a tinge of negligence etc., which was not the charge or the case against the appellant, or allegation of rendering opinion without full thought paid or taking actions which were not within the power of the Public Prosecutor, even then the punishment of withholding four annual increments with permanent effect is totally disproportionate to the acts alleged even if it is assumed that there was a grain of misconduct, which is also not the case, then the punishment inflicted is too harsh, oppressive, arbitrary, excessive and capricious to the extent that it shocks the conscience of the Court. There has been complete lack of proportion in the disciplinary authority in passing the order of punishment which would spoil the career of the appellant. The appellant was a legal professional

truth in his defence statement. The appellant acted within his professional duties and did not breach them in any of the four charges thrust on him.

16. Having examined the case from all possible angles with the assistance of the learned senior counsel and the learned law officer for the State of Haryana, I have no hesitation in allowing this appeal and setting aside the basic order of punishment which started the litigation. The question of imposing lesser punishment in this case does not arise when imposing penalty was wholly unjustified. Accordingly, the second question framed is answered against the State and in favour of the appellant.

17. For the foregoing reasons, this appeal is allowed. The judgments and decrees of the courts below dated 22nd November, 2010 and 9th April, 2013 respectively are set aside. The suit is decreed with costs and the legal consequences of quashing the punishment order will follow suit. State to pay costs assessed at ₹ 2.00 lakhs to the appellant for its wrongful actions subjecting the plaintiff-appellant to protracted legal battle for vindication of his honour and his rights for which he must have incurred considerable expense and faced undue harassment and social disapproval of the society he lives in and lowering of his image as a law officer in the department and among his peers and the embarrassment in Courts he appears in, which today have to be restituted by the wrongdoer in terms of money to vindicate his honour and self esteem, which is unfortunately the only tool in the hands of this Court to remedy beyond the decree.

18. Costs be paid to the appellant by the defendant State within three months from the date of receipt of a certified copy of this order, either from Court or from the appellant, whichever is earlier failing which the costs imposed will earn interest at the rate of 12% per annum till

19. It is further directed that the costs imposed will be paid from State treasury in the first instance but will be recovered from those who took such a wild and reckless decision to persecute the appellant and compel him to litigate. This action is directed to be taken by the State without exception from the top officer to the bottom official whose pen and ink is on the noting sheets and the findings arrived at be placed on the record of this case within six months for the perusal of the Court with the names of the erring persons found involved and how the liability of costs has been fastened amongst them, money recovered and duly paid into the Treasury and proof of deposit accompanying the report to be submitted.

(RAJIV NARAIN RAINA)
JUDGE

15.2.2017
MFK

Whether speaking/reasoned

Yes

Whether Reportable

Yes