

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

**RSA No. 1124 of 2017 (O&M)
DECIDED ON: JULY 17, 2017**

HANUMAN DASS

.....PETITIONER

VERSUS

STATE OF HARYANA & OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Chand Ram Olla, Advocate
 for the petitioner.

JASPAL SINGH, J (ORAL)

CM No. 2588-C of 2017

In view of averments made in the application the same is allowed
and delay of 64 days in filing the appeal is condoned.

CM No. 8713-C of 2017

Application is allowed, as prayed for.

Annexure A-2 (colly) is taken on record, subject to all just
exceptions.

RSA No. 1124 of 2017 (O&M)

Appellant/plaintiff has preferred the instant appeal feeling dissatisfied against the judgment and decree August 17, 2016 passed by Additional District Judge, Hisar whereby, an appeal preferred by appellant against the judgment and decree dated February 24, 2016 passed by Additional Civil Judge (Sr. Division), Hisar dismissing his suit for declaration to the effect that the memo order bearing No. 24, dated July 01, 2015 issued by respondent/defendant No.3 as conveyed to respondents/defendants No.4 and 5 vide his endorsement No. 1978-80 dated July 01, 2015 vide which a recovery of ₹1,13,535/- has been imposed upon the appellant/plaintiff, is wholly illegal, arbitrary, malafide and against the principles of natural justice as well as against the service rules and has no binding effect upon the rights of the appellant/plaintiff with consequential relief of permanent injunction for restraining the respondents/defendants from implementing the afore-said order or from making any recovery from the retiral benefits i.e. gratuity, advance, pension and leave encashment etc. of the appellant/plaintiff; has been dismissed.

The brief facts giving rise to the instant appeal are that appellant/plaintiff joined the services of Haryana Forest Department on January 22, 1997 as Forest Guard. Later on, he was promoted to the post of Forester w.e.f. October 27, 2003. On attaining the age of superannuation, he retired on June 30, 2015. Vide memo No. 24, dated July 01, 2015 issued by respondent/defendant No.3 as conveyed to respondents/defendants No.4 and 5 vide his endorsement No. 1978-80 dated July 01, 2015 vide which a recovery of

₹1,13,535/- has been imposed upon the appellant/plaintiff. The

defendant/respondent No.3 vide his office letter No. 9085 dated December 06, 2006 has issued a show cause notice to the appellant/plaintiff with regard to the huge shortage of trees in Neoli Beat, during his service. In response to the above show cause notice, appellant submitted his reply to defendant/respondent No.3 vide letter No. 1244, dated February 28, 2007. Moreover, this is a joint case and due to shortage of trees in Neoli Beat, show cause notices were also issued to the other officials. Mr. Vinod Kumar Bhatia, was appointed as Enquiry Officer vide order No.15, dated April 15, 2008, who after conducting an enquiry submitted his enquiry report vide letter No. 4915, dated December 11, 2008. Respondent/defendant No.2 by giving his consent on the said enquiry report, has directed the office to take action against the Foresters and Forest Guards.

While assailing the impugned judgments, it has been argued with vehemence by learned counsel for the appellant that the same are absolutely against the evidence available on file and settled canons of law. Misappreciation of evidence as well as settled proposition of law has resulted into miscarriage of justice. It is well settled proposition of law that a charge sheet under Rule 7 of Haryana Civil Services (Punishment and Appeal) Rules, 1987 i.e. for a major penalty is required to be issued and the entire procedure for major penalty has to be strictly followed, which has not been done in the instant case. Neither any legal show cause notice proposing the penalty of recovery, which was mandatory under the Rules has been issued nor the appellant has been afforded an opportunity either to cross-examine the witnesses or to adduce evidence in defence. Moreover, Enquiry Officer conducted enquiry in a wholly

illegal manner because he himself examined and cross-examined the witnesses in order to establish the charge. In fact, there is no cogent or convincing evidence available on enquiry file to substantiate the charges levelled against the appellant/plaintiff.

Learned counsel for the appellant/plaintiff further contended that after conclusion of inquiry report, it was obligatory upon the punishing authority to supply a copy of inquiry report alongwith show cause notice to the delinquent official i.e. appellant/plaintiff. But in the instant case, show cause notice proposing penalty of recovery and other punishment accompanied by the inquiry report has not been issued to the appellant/plaintiff. Moreover, in a similar case, a recovery of 303175/- has been imposed upon Surinder Kumar, which has already been set aside by learned Additional District Judge, Hisar on the ground that no proper opportunity to cross-examine the witnesses was given to him and held that enquiry report being against the principles of natural justice is not binding upon Surinder Kumar. Thus, in the instant case following substantial questions of law arise:

- i) *whether the opportunity of cross-examination was given to the appellant/plaintiff?*
- ii) *whether the recovery imposed upon the appellant/plaintiff is according to law?*
- (iii) *whether the order passed by both the courts below are against the law and facts?*
- (iv) *whether the manifest injustice caused to the appellant/plaintiff?*

The above-said questions are required to be determined by this Court through the instant appeal and that too, by hearing the other party.

This Court has given a deep thought to the afore-said submissions made by learned counsel for the appellant and have scanned the impugned judgments but does not find any legal or factual substance therein.

Before proceeding further to decide the appeal on merits, it would be appropriate to mention that the scope and judicial review in the matter involving challenge to the disciplinary action taken by the employer is very limited. In such like cases, courts are primarily concerned with the question whether the inquiry has been conducted by the competent authority in consonance with the procedure prescribed. Thus, it is to be determined only whether the respondents/defendants have adopted a proper procedure prescribed for conducting the inquiry, afforded sufficient opportunity or hearing to the delinquent official or that the punishment imposing upon the delinquent official is commensurative with the alleged mis-conduct or not.

Adverting to the facts of the case in hand, undisputably, an enquiry into the instant case was conducted twice i.e. initially by Sh. Vinod Kumar Bhatia and thereafter, by his senior officer Mr. R.K. Singh, IFS. After conducting an inquiry by Mr. R.K. Singh, IFS, he submitted his report Ex.D8, the appellant/plaintiff was duly served with show cause notice and charge sheet. He was also provided opportunity of hearing. He filed reply to the show cause notice as well as charge sheet Ex.D7. A copy of order clearly depicts that he was also afforded an opportunity of personal hearing. His reply as well as facts brought on record by the appellant before competent authority were also considered. The appellant is proved to have been provided with several effective opportunities to defend himself and after considering all the

documents including reply and personal hearing, punishment was inflicted.

Here, it would also be pertinent to mention that as far as non providing of opportunity either to cross-examine the witnesses examined in the inquiry or to lead evidence in defence is concerned, it would be suffice to mention that the same is without any convincing evidence. It is evident from the perusal of impugned judgments that the appellant/plaintiff was called upon by inquiry officer several times vide letters Ex.D10 to D-14 to appear in his office in the inquiry proceedings. Thereafter, vide another letter Ex.D15 inquiry officer again called upon the appellant/plaintiff including witnesses to appear in his office on June 25, 2015 alongwith all the relevant documents but he did not care to appear in the inquiry proceedings or to adduce any evidence. The issuance of number of letters time and again calling upon the appellant/plaintiff to appear before inquiry officer in the inquiry proceedings is suggestive of the fact that an ample opportunities were afforded by the inquiry officer to the appellant/plaintiff. But despite that fact, he did not cooperate and failed to appear. Rather, from the proceedings it emerges that he intentionally evaded his presence in the inquiry proceedings. Thus, this Court does not find any merit in the above-said contention put forth by learned counsel for the appellant.

Another contention raised by learned counsel for the appellant during the course of arguments with regard to issuance of charge-sheet for imposition of major penalty is concerned, it also cannot be termed to be illegal or prejudicial to the appellant/plaintiff. It is pretty settled that if a person is charge sheeted for imposition of a major penalty, he cannot be inflicted with a minor penalty. Profitably, in such a situation, we can have the reference of the

pronouncement of this Court delivered in the case of **Punjab State Cooperative Supply and Marketing Federation Ltd. vs. Secretary, Cooperation (Appeals), Punjab and others; 2013 (2) SLR 758**; in which initially, charge-sheet was issued for imposition of major penalty and finally after supplying copy of the enquiry report to the delinquent(s) and affording them opportunity of hearing, minor punishment was imposed. In that situation, it was held by this Court that it cannot be said to be in violation of any provisions of law and could not have been set aside by the appellate authority.

As far as the contention of learned counsel for the appellant with regard to the similar case, in which, penalty imposed upon Surinder Kumar has been set aside by Additional District Judge, Hisar on the ground that no proper opportunity of cross-examination was given to him is concerned, it has nothing to do with the instant case because in the instant case, appellant/plaintiff was afforded sufficient opportunity by the inquiry officer including personal hearing, which was conducted twice by two different officers. Though, number of notices were issued to the appellant/plaintiff calling upon him to appear in the inquiry proceedings but he did not appear intentionally and evaded his appearance. Thus, any order passed in respect of Surinder Kumar by any Court has no binding effect in the instant case. No other point was urged by the appellant/plaintiff.

Taking into consideration the case of the appellant from any of the angles, this Court does not find any merit in the instant appeal. Otherwise also, no question of law arises what to talk of substantial question, which requires determination by this Court, especially, in the circumstances that there are

concurrent findings record by both the courts below.

As a sequel of afore-said discussion, this Court does not find any merit in the instant appeal. As such, it stands dismissed whereby, impugned judgments passed by both the courts below are upheld.

No order as to costs.

JULY 17, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*