

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 289

Regular Second Appeal No.549 of 2014 (O & M)
Date of Decision: September 26, 2017

Dalbir Singh

..... APPELLANT

VERSUS

State of Haryana & others

..... RESPONDENTS

. . .

CORAM: **HON'BLE MR. JUSTICE JASPAL SINGH**

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PRESENT: - Mr. Inderjeet Singh, Advocate, for the appellant.

Mr. C.S. Bakshi, Additional Advocate General, Haryana.

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Jaspal Singh, J

1. Through the instant regular second appeal, appellant has challenged the judgment and decree dated August 14, 2013 passed by the District Judge, Ambala whereby the judgment & decree dated April 19, 2011 passed by the Civil Judge (Junior Division), Ambala has been upheld, vide which, suit filed by the plaintiff – appellant was dismissed.

2. The brief facts of the case are that plaintiff was appointed as Assistant Cashier with Haryana Roadways, Bhiwani. He was promoted as Cashier in the year 1996. On November 08, 2002, he was posted at Ambala Cantonment Bus Stand and went to deposit cash to the tune of ₹ 2,33,828/- in State Bank of India, Ambala Cantonment on his bicycle after informing

Avin Kumar
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I attest to the accuracy and
integrity of this document his superior Murari Lal. When he was passing through Lal Kurti Bazar near

a temple at about 10.40 AM, two persons came on motor cycle and robbed him by throwing chilly powder in his eyes. Some currency notes fell on the ground which were to the tune of ₹ 73,288/-. He reported the matter to Police Station, Parao and handed over the cash of ₹ 73,288/-. Remaining amount of ₹ 1,60,000/- was taken away by the robbers alongwith bag. He also informed the General Manager about the incident on telephone, who after verifying the facts, lodged FIR vide Memo No.7897 Steno dated November 08, 2002. The plaintiff – appellant was placed under suspension vide order dated December 02, 2002 and chargesheeted under Rule 7 of the Haryana Punishment Rules, 1987 vide Memo No.4687/AE-I/E-2 dated December 19, 2002 by changing the incident of robbery into embezzlement of amount of ₹ 1,60,000/-. The appellant demanded documents vide letter dated January 07, 2003 but his request was ignored. Departmental enquiry was started. A show cause notice dated July 06, 2005 was served upon him alongwith copy of enquiry report (dated Nil) wherein three punishments were proposed to be imposed upon him which was duly replied vide his letter dated July 19, 2005 and reply dated October 05, 2005 was ignored and vide order dated January 25, 2006 he was punished as under:-

“(a) Recovery from his pay of entire amount of ₹ 1.60 lacs, which is loss caused because of his acts of commission.

(b) Reduction to the minimum of the time scale for 3 years with stipulation that the reduction will not have the effect of postponing increments.

(c) Period of suspension to be restricted to subsistence allowance already paid.”

3. Appellant preferred an appeal dated March 06, 2006 before the Commissioner, who vide order dated April 26, 2007 maintained the

punishment order but modified the impugned order and reduced punishment to minimum of the time scale for a period of one year instead of three years.

4. Plaintiff filed the suit for declaration to the effect that punishment order dated January 25, 2006 passed by the Transport Commissioner, Haryana imposing aforesaid penalties upon him and order dated April 26, 2007 passed by the Financial Commissioner & Secretary to Government, Haryana Transport Department are illegal, wrong, against the provisions of Punishment & Appeal Rules, and prayed for setting aside of the same, restoring the amount of recovery already deducted from his salary.

5. The suit was contested by the defendants – respondents. Replication was filed and issues were framed. Parties led their evidence in support of their respective cases.

6. After hearing learned counsel for the parties and perusing the documents, trial court vide judgment & decree dated April 19, 2011 dismissed the suit of plaintiff. Thereafter, appeal preferred by the appellant before lower appellate court was also dismissed vide its judgment & decree dated August 14, 2013.

7. Aggrieved against both the judgments, appellant has filed the instant regular second appeal challenging the judgments & decrees passed by the courts below as well as the punishment orders dated January 25, 2006 and April 26, 2007.

8. While assailing the impugned judgments & decrees passed by both the courts below and the findings recorded therein, it has been argued with vehemence by learned counsel for the appellant that punishment imposed upon the appellant is not sustainable in the eyes of law. Even the impugned orders whereby punishment has been imposed amounts to double jeopardy. Not only this, major and minor punishments have been imposed

which is impermissible under law. Plaintiff – appellant was not supplied the copies of relevant documents demanded by him. The order passed by the appellate authority is non-speaking and unreasoned. The evidence led by the appellant in departmental enquiry has not been taken into consideration. He was not given proper opportunity of fair hearing. Copy of report of preliminary enquiry as well as the documents relied upon in the chargesheet were also not supplied to the plaintiff despite his applications Ex.P6, P8 and P10. The punishing authority imposed the punishments without going through his reply to show cause notice.

9. Per contra, learned counsel for the respondents – State has contended that there is no illegality or irregularity in the judgments & decrees passed by the courts below. The appellant was given proper opportunity to defend himself and was afforded personal hearing. Learned counsel prayed for dismissal of the instant appeal.

10. This Court has given an anxious thought to the rival submissions made by learned counsel for the parties and perused the documents available on record. This Court finds that impugned judgments & decrees passed by the courts below being against the law and facts as well as settled proposition of law are not sustainable in the eyes of law and deserve to be set aside.

11. First of all, it would be appropriate to mention here that preliminary enquiry is the foundation of the regular departmental enquiry and at the time of preliminary enquiry report, appellant was not afforded an opportunity of being heard. Infact, he had moved an application dated March 06, 2003 with a request to supply various documents but instead of supplying/ handing over the documents which were sought by the appellant,

accordingly order was passed and enquiry officer was appointed for conducting regular enquiry. Infact, preliminary enquiry is without even obtaining the reply from the appellant, what to say, that, his reply was sought or that he was afforded an opportunity to put up his case. List of documents was not attached with the chargesheet, from which, it is clear that he was not supplied the documents. Mere fact that appellant filed reply to the chargesheet is not sufficient to hold that no prejudice was caused to the appellant either for supply of documents or by treating his application for supply of documents as reply. Infact, the impugned judgments & decrees as well as orders passed by the enquiry officer and punishing authorities can be termed to be without application of mind. Nobody has bothered to see that application is for supply of documents and not a reply. Similarly, this aspect was not considered either by the lower court while passing judgment & decree dated April 19, 2011 or by the lower appellate court while dismissing the appeal of appellant. The disciplinary authority is duty bound to make available all relevant documents which are sought to be relied upon against the delinquent. This is the basic requirement of principles of natural justice and mandate of Article 311 of the Constitution. If the employee is deprived of this basic right, his defence is completely prejudiced. In **State of U.P. & others vs. Saroj Kumar Sinha, 2010 AIR (SC) 3131**, Hon'ble Apex Court held as under:-

“36. The proposition of law that a government employee facing a department enquiry is entitled to all the relevant statement, documents and other materials to enable him to have a reasonable opportunity to defend himself in the department enquiry against the charges is too well established to need any further reiteration. Nevertheless given the facts of this case we may re-emphasise the law as stated by this Court in the case of *State of Punjab vs. Bhagat Ram* (1975) 1 SCC 155:

“The State contended that the respondent was not entitled to get copies of statements. The reasoning of the State was that the respondent was given the opportunity to cross-examine the witnesses and during the cross-examination the respondent would have the opportunity of confronting the witnesses with the statements. It is contended that the synopsis was adequate to acquaint the respondent with the gist of the evidence.

The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken.”

12. It is clear from the above referred paragraph that denial of supplying the relevant documents in support of charges levelled against the plaintiff – appellant was unjust and unfair. Meaning thereby, he was deprived of the reasonable opportunity of showing cause against the action proposed to be taken. Moreover, respondents have miserably failed to give any reasonable explanation as to why the documents were not supplied to the plaintiff – appellant. In this way, plaintiff – appellant has been denied a reasonable opportunity to defend himself.

13. As regards non-speaking order of appellate authority, it is a settled proposition that appellate authority must not only give a hearing to the government servant concerned but also pass a reasoned order dealing with the contentions raised by him in the appeal. Reasoned orders promote public confidence in the administrative process. An objective consideration is possible only if the delinquent servant is heard and given a chance to satisfy the authority regarding the final orders that may be passed on his appeal. A Division Bench of this Court in **Hari Singh vs. State of Punjab & another, 2004(3) SLR 778** held that recording of reasons is a safeguard to observe rule of law, introduce clarity, check extraneous consideration and minimize arbitrariness. If order is cryptic and devoid of reasons, court cannot effectively exercise power of judicial review. In absence of such rigorous compliance, order is violative of rules of natural justice and thus illegal. In the case in hand, impugned order passed by the appellate authority is only a reiteration of the facts. The arguments put-forth by the delinquent official were neither discussed nor any reasoning for rejection of those contentions was reflected in the order which stands concluded within half page.

14. In the case in hand, the main ground for rejection of appeal filed by plaintiff – appellant, vide order dated April 26, 2007 passed by the Financial Commissioner & Principal Secretary, Government of Haryana, Transport Department, is “A perusal of the office record and Court orders bears testimony to the fact that all grounds of appeal filed by him are unfounded and without any basis”. Though, delinquent, plaintiff – appellant was present before the appellate authority, his contentions have not been dealt with in the way, it was required. A bare reading of order dated April

correct perspective and arbitrarily rejected the appeal without assigning any reason whatsoever for upholding the order of punishment, modifying the punishment of reduction to minimum of time scale for a period of three years to one year.

15. In this case, appellant was inflicted three penalties namely (i) recovery from his pay of entire amount of ₹ 1.60 lac i.e. total loss caused; (ii) reduction to the minimum of the time scale for three years with the stipulation that reduction will not have the effect of postponing increments which was subsequently reduced to the period of one year; and (iii) period of suspension to be restricted to subsistence allowance already paid. So, it is clear that first penalty regarding recovery of pecuniary loss caused by the appellant is a minor penalty whereas the other two penalties are major. As per judgment of the Hon'ble Supreme Court in the case of **Kulwant Singh Gill vs. State of Punjab, 1991 (2) SCT 30**, wherever such punishment is imposed with cumulative effect, it is to be treated as major penalty. Therefore, in these facts & circumstances, it is a case of double jeopardy. There could not have been three penalties imposed upon the appellant at the same time.

16. In the case in hand, plaintiff – appellant was placed under suspension vide order dated December 02, 2002 and chargesheeted under Rule 7 of the Haryana Punishment Rules, 1987 vide Memo dated December 19, 2002 by changing the incident of robbery into embezzlement of amount of ₹ 1,60,000/-. The appellant demanded documents vide letter dated January 07, 2003 but his request was ignored. To the utter surprise, instead of considering his request or supplying the documents, regular departmental enquiry was initiated and his request/letter dated January 7, 2003 was

which was rejected and enquiry officer was appointed to conduct a regular enquiry against him vide order dated January 24, 2003 passed by the Transport Commissioner, Haryana. In these circumstances, plaintiff has been denied a reasonable opportunity to defend himself and the enquiry itself is held to be violative of principles of natural justice.

17. In the light of what has been observed, judgments & decrees passed by the courts below are not sustainable in the eyes of law and are set aside. The appeal stands allowed accordingly. Consequently, impugned orders dated January 25, 2006 and April 26, 2007 passed by the punishing authority and the appellate authority are set aside.

18. No order as to costs.

September 26, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No