

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

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**RSA-2775-2017 (O&M)
Date of Decision : 13.10.2017**

EHC Mahender Singh and another

..... Appellants

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. Surinder Kumar Daaria, Advocate
for the appellants.

AJAY TEWARI, J. (Oral)

This appeal has been filed against the concurrent judgments of the Courts below.

Brief facts of the case are that the appellants appeared in the examination held by the police department for being brought on the promotion list B-1 for the year 2008. It is alleged that during that examination they were caught using mobile phone. Regular enquiry was

held and after following due procedure the punishing authority imposed

upon them the punishment of stoppage of three increments with permanent effect. The appellants preferred an appeal wherein the appellate authority rejected their claim against the finding of guilt and upheld the same but reduced the punishment to stoppage of one increment with permanent effect. Thereafter, the appellants preferred revision which was also dismissed. It is then that they filed the present civil suit for declaration against the findings of inquiry officer and punishment order dated 11.06.2009.

The primary ground raised before me today is that the inquiry was defective in so much as in the charge-sheet it had been stated that when the appellants were detected using mobile phone in the examination, the mobile phone was taken away from them and a note was made on the paper.

As per the counsel for the appellants that paper was never presented. Moreover, he has argued that even as per the allegation it was an on-line test and therefore there was no question of any paper having been taken from them. On the basis of these facts, he has raised three arguments. The first argument is that the testimony of the invigilator was false. Secondly, that even if there was a piece of paper then it was incumbent upon the Committee to have produced that piece of paper where this noting was made and in the absence thereof no finding of guilt could have been returned since the alleged note constituted the crux of the matter. The third argument is that the department did not produce any instructions which barred the use of mobile phone during examination.

Both the Courts below have considered these arguments. In the

disciplinary proceedings on employees the Courts are not enjoined to sit in appeal but have primarily to ascertain if, (i) the procedural safeguards have been followed, (ii) the order is not vitiated due to any extraneous consideration, (iii) the findings returned are so perverse or arbitrary that no reasonable person could have arrived at the same on the basis of that evidence.

In my opinion, these parameters are unexceptionable and it is only through this prism that the arguments of the counsel for the appellants have to be tested. I have noticed that the invigilator Harish Kumar had appeared and gave testimony that he personally found the appellants using the mobile phone during the examination. Another official who was present in the examination and was on duty was V. Satishbalan who had also deposed on the same lines. The Courts below found that though the appellants had cross-examined these two witnesses but they had not been able to elicit anything in their favour. The Courts below also found that there was neither any allegation nor any material to suggest that the two officials who had deposed against the appellants had any animosity against them. The Courts below further recorded that they had gone through the inquiry report which as per them was exhaustive and had considered all the relevant evidence. The Courts below noticed that the appellate authority after hearing the appellants reduced the punishment and they had also been heard by the revisional authority. I have to now examine the arguments about the note which was stated to have been recorded at the time of the seizure of the mobile phone which was neither supplied to the appellants nor produced before the inquiry officer. No doubt, this omission is there.

Counsel is right when he argues that it was an on-line test and there was no paper which could have been seized or a note could have been recorded. The question is whether the testimony of Harish Kumar and V. Satishbalan can be discarded in totality because it has been wrongly stated that a note was recorded on the paper. In my considered opinion, this wrong statement would not have the effect of completely nullifying the other positive evidence of these witnesses. The appellants were found guilty primarily on the basis of the oral testimony of these witnesses that they were caught using mobile phones. In such a situation a note which may have been written cannot be taken to be the sole evidence. If that is so then any note which is recorded on a piece of paper at any time could be treated as substantive evidence. What is important is that the oral testimony of these witnesses was accepted by the inquiry authority, the punishing authority, the appellate authority and the revisional authority. I regret my inability to agree with the counsel for the appellants that the testimony was false because of this wrong statement. As regards the third argument he has relied upon the judgment of the Supreme Court in the matter of ***The Government of Andhra Pradesh and others vs. A. Venkata Rayudu, 2007 (1) SCC 338***. In that case the charge against the respondent was that he had violated Government order but the details of those orders were not mentioned in the charge-sheet. That judgment is completely distinguishable.

Appeal is dismissed. No costs.

Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

October 13, 2017
ashish

(AJAY TEWARI)
JUDGE

Whether speaking/reasoned	-	Yes/No
Whether reportable	-	Yes/No