IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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CWP No. 15481 of 2016
Date of decision : 6-10-2018

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Virinder Sharma

...........Petitioner

Versus

State of Haryana and another

..........Respondents

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. S.K Nehra, Advocate for the petitioner.

Mr. Hitesh Pandit, Addl. A.G., Haryana.

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RITU BAHRI, J.

The petitioner is seeking quashing of the orders dated 23.6.2015 (Annexure P-3) and 26.7.2016 (Annexure P-5). Vide order dated 23.6.2015 (Annexure P-3), the earlier order dated 4.8.2014 (Annexure P-2) passed by the Financial Commissioner, Governemnt of Haryana, Revenue and Disaster Mananger, was reviewed by the Successor in office.

The petitioner joined as Clerk on 22.4.1977 with respondent no.1 and promoted as Assistant on 28.4.1988. Thereafter, he was promoted as Deputy Superintendent in the year 2006, Superintendent in the year April 2009, Under Secretary in the year 2012 and Deputy Secretary in the year

2016. While the petitioner was working as Superintendent during 22.7.2011 to 1.5.2012 in the Cooperation Department, Haryana, in one case bearing CWP No. 13326 of 2010, regarding inter se seniority of Assistant Registrar, Cooperative Societies pending before this Court on 2.3.2012, it was observed that no steps were taken by the Department to finally decide the seniority and on that date none was present from the Department to assist the Court. The case was adjourned to 14.3.2012 and cost of Rs.20,000/- was ordered to be recovered from the officials who were held to be responsible for undertaking the exercise of fixation of seniority inter se between the petitioners and the respondents and finalize the same. In the above backdrop, a charge sheet dated 21.8.2013 (Annexure P-1) was issued to the petitioner under Rule 8 of Haryana Civil Services (Punishment and Appeal) Rules, 1987 and vide order dated 4.8.2014 (Annexure P-2), the then Additional Chief Secretary and Financial Commissioner to Government of Haryana imposed a punishment of recovery of Rs.6670/- on the petitioner. The petitioner deposited the amount of Rs.6670/- as directed by the then Financial Commissioner. Thereafter, vide order dated 23.6.2015 (Annexure P-3) passed by the Additional Chief Secretary and Financial Commissioner, Revenue and Disaster Management, the punishment awarded vide order dated 4.8.2014 (Annexure P-2) was enhanced and reviewed and the petitioner was directed to deposit further Rs.3330/-. Vide this order, one Tilak Raj, Assistant was directed to deposit Rs.10,000/-. Against this order, an appeal (Annexure P-4) was filed by the petitioner before the concerned Minister of the Revenue and Disaster Management Department on

18.9.2015. Despite the appeal of the petitioner, the amount of Rs.3330/- was recovered from the salary of the petitioner. The petitioner was called for personal hearing by the Additional Chief Secretary, Financial Commissioner, Revenue and Disaster Management. Vide order dated 26.7.2016 (Annexure P-5), the entire amount of Rs.20,000/- has been directed to be paid by the petitioner. Since the recovery of Rs.10,000/- had already been made, it was directed vide impugned order dated 26.7.2016 (Annexure P-5) that the petitioner is being directed to deposit the remaining amount of Rs.10,000/-. Hence, the present petition.

Counsel for the petitioner has argued that no order enhancing the penalty should be passed unless an opportunity of making a representation against any such enhanced penalty is granted, which in the present case has not been granted to the petitioner. The respondents are trying to justify order dated 23.6.2015 (Annexure P-3) on the ground that at the time of issuing charge sheet to Ram Ditta and Hari Kishan who were found negligent while passing the impugned order dated 4.8.2014 (Annexure P-2), it was found that these two employees were not found posted in the Cooperation Department from the period from 17.10.2011 to 2.3.2012. Once, the involvement of these officers were not found they were not held responsible for the negligence and the punishment awarded vide order dated 4.8.2014 (Annexure P-2) was enhanced and reviewed and the petitioner was directed to deposit further Rs.3300/-. It was the duty of the respondent to give notice to the petitioner before enhancing the punishment, which has not been done.

The first question to be considered is whether order dated 4.8.2014 (Annexure P-2) could be reviewed by the Successor in office vide order dated 12/23.6.2015 (Annexure P-3) without issuing notice to the petitioner. The second question to be considered is whether the Financial Commissioner, Government of Haryana, Revenue and Disaster Management Department could pass the order dated 26.7.2016 (Annexure P-5) on an order under appeal which was pending before the Minister concerned

The respondents have filed their written statement and have clarified that when order dated 4.8.2014 (Annexure P-2) was passed against the petitioner as well as Ram Ditta and Hari Kishan, the Cooperation Department submitted reply vide their letter dated 23.12.2014 (Annexure R-5) that Ram Ditta and Hari Kishan were not posted in the Cooperation Department during the period from 17.10.2011 to 02.03.2012 and they could not be charge sheeted. Thereafter respondent no.1 passed the order dated 23.6.2015 (Annexure P-3) wherein it was directed that the amount of Rs.3300/- be recovered from the salary of the petitioner and from the salary of Tilak Raj, Assistant Rs.10,000/- be recovered immediately as both of them were found equally liable as per the record of Cooperation Department. Against the order dated 23.6.2015 (Annexure P-3), appeal was filed before the appellate authority i.e Revenue Minister, Haryana. Appeal of the petitioner was remanded to hear the petitioner afresh and decide the case accordingly. Thereafter after hearing the petitioner, Additional Chief Secretary and Financial Commissioner of Government of Haryana, Revenue and Disaster Management Department had passed the order dated 26.7.2016 (Annexure P-5) wherein the petitioner was directed to deposit the remaining amount of Rs.10,000/-. Thus the action of the respondent-authority is according to law and justice. It was further submitted in the written statement that as per provisions contained in Appendix B, Rule 11(1) of the Haryana Financial Commissioner's Office (Group-A) Service Rules, 1980, respondent no.1 is the competent authority for imposing penalty and the Appellate Authority is Government (Annexure R-8). In addition to this, as per provision made in the Rule 22 (2) (c) of the Haryana Civil Services (Punishment and Appeal) Rules, 1987, the appellate authority has the powers as under:-

> *(iii) Whether the penalty is excessive, adequate or inadequate and after such consideration and consultation with the Commission, whenever necessary, the appellate authority should pass a order either setting aside, reducing confirming or enhancing the penalty or remit the case to the subordinate authority with such direction as it may deem fit in the circumstances of the case. No order enhancing the penalty should be passed unless the appellant is given an opportunity of making a representation against any such proposed enhanced penalty.*

Reference at this stage can be made to a judgment of Hon'ble the Supreme Court of India in the case of ***MD, Maharashtra Cotton Growers Market Federation Ltd. vs. Choughule Popatrao Annasaheb and another 2004(1) SCT 347***, wherein a minor punishment had been imposed by the disciplinary authority in a departmental enquiry initiated against the respondent. The enquiry officer found the charges proved against the respondent. The enquiry officer directed for recovery of a sum of Rs.9000 from the respondent and stoppage of his promotion for a period of three years. Aggrieved, the respondent filed an appeal against the order imposing minor punishment. Later on, he gave an application for withdrawal of the appeal. However, the appellate authority continued with the appeal and enhanced the punishment by passing an order of removal against the respondent. The respondent, thereafter preferred a writ petition before the High Court challenging the order of the appellate authority. The writ petition was allowed in part. It is against the said judgment, the appellant filed appeal before Hon'ble the Supreme Court. It was held that once delinquent officer has withdrawn appeal, there was no valid reason for appellate authority to have proceeded with the same. Moreover, when there is no suo motu or any other power under Rules with appellate authority to enhance punishment.

A perusal of the impugned order dated 26.7.2016 (Annexure P-5) shows that the Revenue Minister had granted opportunity of personal hearing to the petitioner on 11.1.2016 and vide order dated 1.4.2016, Tilak Raj Assistant was exonerated. Thereafter, an opportunity of hearing was again granted to the petitioner on 3.3.2016 by the Revenue Minister and thereafter, recovery of Rs.20,000/- was sought to be recovered from him vide order dated 26.7.2016 (Annexure P-5) as he was the only person who was found to be guilty after enquiry. Thus, the impugned order 26.7.2016 (Annexure P-5) has been passed by respondent no.1 as per Rule 22 (2) (c) of the Haryana Civil Services (Punishment and Appeal) Rules, 1987.

In view of all that has been discussed above, there is no merit in the present writ petition and the same is hereby dismissed.

6.10.2018 **(RITU BAHRI)**
ritu **JUDGE**

Whether speaking/reasoned Yes

Whether reportable No