227 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 22893 of 2014.
Date of Decision: 22.01.2018.

Darshan Kumar

... Petitioner

Versus

State of Punjab and another

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Rajiv Atma Ram, Sr. Advocate with
Mr. Nishant Bhardwaj, Advocate,
for the petitioner.

Ms. Sudeepti Sharma, Addl. AG, Punjab.

JITENDRA CHAUHAN.J.

Challenge in this civil writ petition has been laid to the enquiry report dated 13.08.2013 (Annexure P-3); order of dismissal dated 10.01.2014 (Annexure P-6) and; the appellate order for removal of the petitioner from service dated 16.09.2014 (Annexure P-9).

The petitioner was initially appointed as Clerk in the respondent department vide order dated 14.12.1988 and was thereafter promoted as Excise Inspector vide order dated 25.02.2008. While the petitioner was posted at Information Collection Centre, Chullar Kalan in the year 2012-13, certain entries regarding 45 trucks of paddy were alleged to have been made by using the login of the petitioner without the truck having physically passed through the barrier. On the basis of above allegations, he was charge-sheeted; a regular departmental inquiry was held; he was found guilty and; ultimately he was dismissed from service vide Annexure P-6. The statutory appeal filed by the petitioner was partially accepted, vide

Annexure P-9 and the punishment was reduced from dismissal to removal which shall not be disqualification for future employment under the government.

Learned Senior counsel refers to Annexure P-7 and additional affidavit of the petitioner dated 07.09.2017 and inter-alia, contends that the penalty imposed by the disciplinary authority as also the appellate authority is discriminatory. He further refers to a chart reproduced in paragraph No.6 of the affidavit to depict discrimination in the matter of penalty. The chart reads as under:-

Sr. No.	Name	Date of issuance of charge sheet	Charge framed	No. of bogus transactions	Loss of revenue and whether subsequently deposited	ETC Order (Punishment)	FCT Order (Appellate)
1.	Darshan Kumar (deponent)	19.03.2013	Negligence, carelessness, omission	40	Rs.11,15,000/- Total tax deposited through cheque before initiation by deptt. in three cases viz. Darshan Kumar, Vijay Kumar and Darshan Singh (Sr. No. 1 to 3)	Dismissal from service	Removal from service
2.	Vijay Kumar	19.03.2013	Negligence, carelessness, omission	5		Stopped two annual increment with future effect	One increment stopped
3.	Darshan Singh	16.12.2014 (charge sheet issued after 21 months later after notice of motion issued by Hon'ble High Court in writ petition filed by the deponent	-do- Reason of censure:- no revenue loss, tax already deposited. Transaction entered in computer ICC data	7		Censure	

4.	Prem Singh (ETI)	24.07.2013	Negligence, carelessness, omission	165	12 lacs Tax deposited in four cases viz. Prem Singh, Rajinder Kumar, Rakesh Kumar, Paviter Singh (Sr. No. 4 to 7)	Six increments stopped with future effect	Appeal rejected
5.	Rajinder Kumar (ETI)	24.07.2013	Negligence, carelessness, omission	106		Six increments stopped with future effect	Two increment stopped with future effect
6.	Rakesh Kumar (ETI)	24.07.2013	Negligence, carelessness, omission	65		Charge sheet cancelled	
7.	Paviter Singh (ETI)	24.07.2013	Negligence, carelessness, omission	28		Three increment stopped with future effect	Appeal rejected
8.	Vikramjit Singh (ETI)	20.08.2013	Negligence, carelessness, omission	5	32 lacs. Tax not deposited	Six increments stopped	Two increment stopped
9.	Ramesh Kumar (ETI)	20.08.2013	Negligence, carelessness, omission	8	15 lacs Tax not deposited	Pay fix in initial scale	Two increment stopped with future effect
10.	Suresh Mittal (ETI)	20.08.2013	Negligence, carelessness, omission	4	8 lacs Tax not deposited	Three increment stopped with future effect	Punishment cancelled

Learned State counsel does not controvert the contentions raised by learned Senior counsel.

Heard.

A perusal of the chart shows that one Prem Singh was alleged to have made 165 entries of bogus transactions; Rajinder Kumar was alleged to have made 106 entries of bogus transactions whereas, the petitioner was alleged to have made 40 entries of bogus transactions. The said employees were awarded punishment of stoppage of 6 increments with future effect whereas, the petitioner has been removed from service. Thus, the petitioner has been discriminated as he has been given stricter penalty than that of other similarly situated persons, namely, Prem Singh and Rajinder Kumar, Inspectors.

Hon'ble the Suprme Court in **Rajendra Yadav vs. State of M.P. And others 2013(2) SCT 732** held as under:-

> "The Doctrine of Equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The Disciplinary Authority cannot impose punishment which is disproportionate, i.e., lesser punishment for serious offences and stringent punishment for lesser offences."

In **LIC Corporation of India and others vs. Triveni Sharan Mishra, JT 2014(10) SC 141** it was held as under:-

> "From the papers on record before us, it appears that for mentioning less qualification to secure the job, similarly situated another employee (one Daluram Patidar) was let off by the Life Insurance Corporation of India by awarding punishment of stoppage of increments for two years with cumulative effect. We are of the opinion that the High Court has rightly taken note of said fact while allowing the writ petition, and directing the employer to consider the imposition of similar penalty after

reinstatement of the writ petitioner."

In view of above, the order of dismissal (Annexure P-6) and the order passed by the appellate authority (Annexure P-9) are set aside with a direction to the respondents to consider the case of the petitioner in the light of the judgments rendered in ***Rajendra Yadav and Triveni Sharan Mishra's cases (supra)*** and in terms of the co-employees, namely, Prem Singh and Rajinder Kumar in case they are identically placed.

Disposed of.

22.01.2018. **(JITENDRA CHAUHAN)**
SN **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No