

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

CWP No. 8934 of 2011 (O&M)

Date of decision: 14.12.2018

P. S. Sawhney

.. Petitioner

vs

Central Administrative Tribunal and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Petitioner in person.
Mr. Vikas Chatrath and Mr. Khush Karan Kumar, Advocates,
for respondent nos. 3 to 7.

Rajiv Sharma, J.

The petitioner was served with a memorandum dated 3.1.1989. He submitted reply to the same on 9.2.1989. The petitioner had also made representation against the issuance of memorandum but the same was rejected on 23.4.1990. The disciplinary authority appointed Mr. M. M. Hurria as the Enquiry Officer on 28.8.1991. The petitioner assailed the disciplinary proceedings by filing OA No. 1203 of 1991. It was disposed of on 1.1.2001. Thereafter, the previous Enquiry Officer was again appointed as Enquiry Officer to look into the charges levelled against the petitioner vide order dated 20.3.2001. The enquiry report was submitted by the Enquiry Officer to the Disciplinary Authority on 9.5.2001. The petitioner was permitted to file representation against the enquiry report vide order dated 3.7.2001. The petitioner submitted representation to the Disciplinary Authority stating therein that enquiry proceedings could not be initiated against an employee for any event which took place more than four years before such institution. The fact of the matter is that the Disciplinary Authority had imposed the penalty of deduction of ₹ 500/- per annum vide

order dated 31.7.2002. The petitioner filed an appeal on 2.8.2002. There is nothing on record that the appeal filed by the petitioner was ever decided. It is in these circumstances, the petitioner filed OA No. 654 of 2006. It was decided on 12.4.2008.

The petitioner has appeared in person. The petition is not properly drafted. Moreover, the strict principles of C.P.C. governing the pleadings are not attracted in the application filed under the Central Administrative Tribunal Act, 1985. The purpose of the Act is to give speedy justice in service matters.

The petitioner has approached this Court for withdrawing the memorandum of charges dated 3.1.1989 and for setting aside the order dated 31.7.2002. The objection raised by learned counsel for the Union Territory, Chandigarh, is that the petition was barred by limitation in terms of Section 21 of the Central Administrative Tribunal Act, 1985. Learned counsel appearing for Union Territory, Chandigarh, submitted that the petitioner has not even challenged the order dated 12.4.2008 in the present case.

We have gone through the charges framed against the petitioner on 3.1.1989. The petitioner has not been supplied the list of witnesses and the documents relied upon by the department during the course of disciplinary proceedings. It was necessary for the Disciplinary Authority to annex list of witnesses and the documents to be relied upon by the department along with the articles of charges.

Record was produced by learned counsel appearing for Union Territory, Chandigarh. We have gone through the enquiry report dated 9.5.2001. There is reference to the documents also. The Enquiry Officer has

relied upon the statements of two witnesses. The list of witnesses and the documents should have been annexed with the memorandum of charges dated 3.1.1989. The petitioner was permitted, as noticed above, to reply by filing representation to the enquiry report. He filed reply on 11.7.2001. The petitioner has given explanation that the enquiry could not be continued against him since the matter pertains to the year 1989. The Enquiry Officer was biased. However, without taking into consideration his reply filed by him on 11.7.2001, the impugned order dated 31.7.2002 awarding punishment of deduction in pension of ₹ 500/- per annum was passed. In our considered opinion, the representation made by the petitioner on 11.7.2001 against the enquiry report dated 9.5.2001 should have been considered by the Disciplinary Authority in right perspective. The petitioner was asked to organise a conference. He has apprised the department that due to compelling circumstances, he could not organise the same. The same cannot be termed as insubordination.

Learned counsel appearing for Union Territory, Chandigarh, submitted that the petitioner has not challenged the enquiry report. However, the fact of the matter is that the petitioner has challenged the final order dated 31.7.2002. All the orders passed by the Disciplinary Authority during the enquiry proceedings from time to time have merged in the order dated 31.7.2002. When the petitioner was permitted to file reply to the enquiry report, it was stated that the enquiry report is self explanatory. It shows that the Disciplinary Authority was biased. The Disciplinary Authority has already made up its mind.

Now as far as the plea of learned counsel for Union Territory, Chandigarh, that the petitioner should have challenged the order rendered

by the Tribunal on 12.4.2008 in OA No. 654/CH of 2006, is concerned, is totally misconceived. The Court can always mould the relief. Since the litigation in the present case is 28 years old, it will not serve any purpose if the petitioner is permitted to amend the petition at this belated stage, as he has attained the age of 80.

The petitioner is 80 years of age. He has earlier filed OA No. 1203 of 1991, which was decided on 1.1.2001. The second petition was filed in the year 2006. The learned Tribunal has decided the matters on merits in view of the peculiar facts and circumstances of the case. He being an old man and appearing in person may not know the nitty gritty of law.

The penalty imposed upon the petitioner is also disproportionate to the alleged misconduct. It is settled law that the penalty must commensurate with the alleged misconduct. Keeping in view the scope of the matter, the same is held to be disproportionate.

Accordingly, the writ petition is allowed and the order passed by the Disciplinary Authority and the order dated 12.4.2008 rendered by the learned Tribunal in OA No. 654 of 2006 are set aside.

The amount already deducted from the pension of the petitioner is ordered to be refunded to him within a period of four weeks from today along with interest @ 18% per annum. The cost is quantified at ₹ 50,000/-.

(Rajiv Sharma)
Judge

14.12.2018
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/ reasoned

Yes/No

Whether Reportable

Yes/No