

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

**Civil Writ Petition No. 2056 of 2017 (O&M)
Date of Decision: 11.09.2018**

Avtar Chand

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Rajeev Anand, Advocate
for the petitioner.

Mrs. Sudeepti Sharma, Additional Advocate General, Punjab
for the respondents/State.

JASWANT SINGH, J.

Petitioner (Avtar Chand) is working as Executive Officer under the Punjab Municipal Service and was posted under Municipal Council Banga, where certain allegations were levelled against him which resulted in initiation of departmental proceedings and award of punishment of “Stoppage of Two Annual Increments without cumulative effect”. The petitioner is seeking quashing the Order dated 21.11.2016 (**Annexure P-12**) passed by the Additional Chief Secretary Local Bodies, Government Of Punjab (respondent No. 1), who has passed punishment of withholding of two annual increments without future effect and for the quashing of the Charge Sheet dated 04.03.2016 (**Annexure P-9**). The petitioner has further prayed for grant of all consequential benefits with all arrears with interest thereupon.

2. The facts pleaded are that in year 2014-15, while the petitioner was posted as Executive Officer Municipal Council, Banga (now Shaheed Bhagat Singh Nagar), fourteen (14) works amounting to Rs 22.59 lakhs towards the maintenance of the streets, drainage and other development works to be carried out in various wards of Municipal Council, Banga were advertised on 22.05.2015 (**Annexure P-1**), mentioning that the amount and the number of works can be increased / decreased on the spot.

Thereafter, before opening of the tender date on 08.06.2015 (**Annexure P-2**), resolution was passed for including six (06) more works citing some works were important which were required to be completed in view of approaching rainy season and as keeping public interest was paramount consideration. Thus, in the tenders dated 10.06.2015 (**Annexure P-3**), in addition to fourteen (14) works already advertised, six (06) more works were included making a total of twenty (20) works amounting to Rs 33.92 lakhs.

The said tender process was stalled by the orders of Regional Deputy Director, Local Government, Jalandhar (respondent No. 3), calling explanation from the petitioner, who was posted as Executive Officer of Municipal Council, Banga at that time. The petitioner gave detailed reply dated 28.07.2015 (**Annexure P-4**) mentioning therein as per the advertisement, the works can be increased or decreased on the spot and based on the approvals by the President, Municipal Council, Banga, six (06) important works like cleaning of the drains and repair of streets which were urgent due to the coming rainy season were added for the tender issued on 10.06.2015. The reply further stated that if for these six (06) works the

tender was re-advertised then it required twenty-one (21) days' waiting and

advertisement in two newspapers resulting into loss of time and additional expenses to be borne by the Municipal Council, Banga.

Thereafter, an order dated 11.08.2015 (**Annexure P-5**) was passed by respondent No. 3, wherein in reference to the Municipal Account Code, 1930 Rule XIII.1 having been infringed, the tender received on 10.06.2015 were cancelled. A fresh advertisement was issued including the works advertised on 10.06.2015 along with the additional six (06) works with the same earnest money for the tender on 11.09.2015. The tender notice dated 17.08.2015 (**Annexure P-7**) was issued for tender on 11.09.2015 (**Annexure P-8**), wherein all the aforestated works were included. On 11.09.2015, upon the receipt of tenders, the works were allocated and in due course the works were also executed.

The petitioner contends that on 04.03.2016 (**P-9**), the impugned charge sheet for major penalty was issued by the Additional Chief Secretary, Local Government, Punjab under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 against the petitioner, wherein it was mentioned that the petitioner has violated the Rules and Instructions of the Government, done carelessness in duty and attempted to cause financial loss to the Municipal Council, Banga. The petitioner contends to have given detailed explanation dated 31.03.2016 (**Annexure P-10**) that the entire sequence of events were as per the procedure and as per approvals and sanction of the House of Municipal Council, Banga.

The petitioner came to know that the Secretary, Local Government Punjab had sought a report from Regional Deputy Director Local Government and Chief Engineer, Municipal Council Cadre, Local Government Department, Punjab. In this regard, respondent No. 3 (Regional

Deputy Director, Jalandhar) submitted a report dated 01.07.2016 (**Annexure P-11**) wherein the following report was made in respect of the petitioner:-

“Avtar Chand, Executive Officer,

Executive Officer, Municipal Council, Banga has written in his reply that on 10.06.2015 instead of tenders of 14 development works of Rs 22.49 lakhs, tenders of 20 works of Rs 33.92 lakhs were received by him in which 6 works were added based on the written order dated 08.06.2015 passed by the President, Municipal Council, Banga, the report of Technical Officer and conditions of the tender notice. These 6 works and their proposals were already approved in the meeting of Municipal Council. The Executive Officer has written that he has done no violation of Punjab Municipal Account Code, 1930 Rule XII.2(1) has been made because this rule is not connected with publication of tenders above Rs 50,000/-. The Executive Officer has written that the similar tenders have been issued by Municipal Council, Raikot falling in Ludhiana Region. In the tenders called for different development works by Municipal Council, Raikot on dated 24.07.2014, 15.01.2015 and 16.02.2016 the condition regarding the increase or decrease of works or amount in the main tender. The Executive Officer has written that the tenders called on 10.06.2015 were cancelled by the order dated 11.08.2015 passed by Regional Deputy Director, Local Government, Jalandhar and after that his posting has been done to Municipal Council, Garhshankar. The Municipal Council, Banga has got all these works executed by tender called on 11.09.2016. He has made no attempt to cause any financial loss to Municipal Council, Banga and has obeyed the orders of President, Municipal Council, Banga only.

The post of Executive Officer is not a technical post. The preparation of proposals of development works, the preparation of tender notices and calling of tenders under Rule XIII.2(1) of Punjab Municipal Account Code, 1930 and the supervision of the development works is all the duty

of technical officers. So far as the Executive Officer has written that he has not violated Rule XIII-2(1) of Punjab Municipal Account Code, 1930 as mentioned in the charge sheet, it is wrongly mentioned Rule XIII-2(1) instead of XIII-2(1) in the charge sheet. The tenders for development works received in office of Municipal Council, Banga have been cancelled by this office. In this way no financial loss has occurred to Municipal Council, Banga.”

In the background of the aforestated facts and circumstances, without conducting any inquiry or detailing any Inquiry Officer on the basis of the internal reports at the back of the petitioner, an order dated 21.11.2016 **(P-12)** was passed without any reference to the reply of the petitioner and a punitive/penal order was passed against the petitioner, wherein his two (02) annual increments without cumulative effect were ordered to be stopped. The petitioner contends that since the order has been passed by the Additional Chief Secretary, Local Government Department, Punjab, who is the highest Authority representing Government, and thus leaves no remedy of appeal to the petitioner.

3. The respondents have filed their written statement by way of affidavit dated 09.05.2018 of Sh. Sanjeev Sharma, Regional Deputy Director, Urban Local Bodies, Jalandhar (respondent No. 3), wherein the facts are not disputed by the respondents and it is stated that the petitioner breached procedure under the Rules and as his reply was found to be unsatisfactory, therefore, the petitioner was held guilty of omissions and commissions and was awarded Minor punishment under the Rules. The respondents have admitted the report dated 01.07.2016 **(P-11)** submitted by respondent No. 3 and the contents thereof being relied by the petitioner in his support as no case being made out against the petitioner.

4. Having scrutinized the arguments of the learned counsel for the parties and the records, this Court finds that the petition deserves to be allowed.

The main issue set up by the petitioner is that the action of respondent No. 1 in awarding him minor punishment after issuance of charge-sheet for major punishment without holding the departmental inquiry is in derogation of the provisions of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. Counsel for the petitioner submits that in the case of the petitioner by the issuance of the impugned Articles of charge for Major punishment on 04.03.2016 (**P-9**) and subsequently upon filing of the detailed reply by the petitioner without following any procedure prescribed for major penalties, the minor penalty has been imposed on the petitioner without following any procedure as required under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. Counsel for the petitioner has relied on the **Full Bench** decision of **this Hon'ble Court** in case of “**Dr. K.G. Tiwari Versus State of Haryana**” reported as **2002 (3) RSJ 296**, wherein it has been held that once the charge-sheet has been issued for imposition of major penalties under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970, then the disciplinary authority cannot by merely examining the reply to the charge-sheet inflict minor penalty without holding complete departmental inquiry.

5. On 29.08.2018, during the course of proceedings before this Court, learned State Counsel sought time to seek instructions whether the matter is covered by the decision of the Hon'ble Full Bench in **Dr. K.G. Tiwari's case (supra)**. During the course of hearing today, learned State Counsel concedes that the matter is squarely covered by the aforestated

decision of the Full Bench.

6. The following observations of the Hon'ble Full Bench of this Court are fully applicable to the four corners of the case of petitioner. The relevant portion of the judgment reads as under:-

23.If the chargesheeted employee is informed that the chargesheet is issued under Rule 8, then the chargesheeted employee will know that he will have only one opportunity to put forth his defence in writing to show that not only he is not guilty, but also that a particular type of punishment, especially like the one ordering recovery, should not be imposed. But if the chargesheet is issued under Rule 7, and if the entire procedure prescribed in Rule 7 is fully complied with by holding a complete enquiry, thereafter it will be open to the Disciplinary Authority to impose a major or minor punishment as may be called for. But, to suddenly drop the enquiry contemplated under Rule 7, after getting the explanation, and then to impose a minor punishment as per Rule 8, will cause prejudice to the chargesheeted employee, and deprive him of putting forward his case. The opportunity of making representation as provided for in Rule 8 contemplates a reasonable opportunity to put forth his entire defence which, the chargesheeted employee would put forth, in case he is put on notice that the procedure under the Rule 8 only will be followed. This opportunity he will not get if the chargesheet is issued under the Rule 7 and after considering his explanation, a minor penalty is imposed as per Rule 8. This is the serious prejudice that will be caused to the chargesheeted employee when such a change of procedure is adopted.

24. We may also examine the contentions put forward by the learned counsel for the petitioner from another angle. In a case where a chargesheet is issued under Rule 7 for the imposition of a major penalty, if the disciplinary authority, after receiving the reply to the chargesheet, finds that there is no material against the chargesheeted employee, and therefore, after holding of a regular enquiry, it will not be in

a position to punish the chargesheeted employee, but still, for its own reasons wants to impose some punishment on him, then the disciplinary authority will choose to adopt the methodology of dropping the procedure contemplated under Rule 7, and simply state that the explanation of the chargesheeted employee has been considered, and impose a minor punishment. This is not the object of having two different sets of procedures in the from of Rule 7 and Rule 8. The object of prescribing these rules for holding disciplinary proceedings is to protect the chargesheeted employee from arbitrary and capricious exercise of power by disciplinary authority and from unjust and illegal punishments. These Rules are intended to safeguard the rights of such chargesheeted employee and to comply with the principles of natural justice.

25. Therefore, in interpreting such beneficial provisions contained in these rules, the courts have to accept the interpretation which will advance the object of the rules rather than to defeat it, and also interpret in a manner which will protect the rights of the chargesheeted employees against arbitrary and capricious exercise of power by the disciplinary authority.

8. Since law referred above is fully applicable to the case of the petitioner and in view of the same, the **impugned order dated 21.11.2016 (P-12)** passed by the Additional Chief Secretary Local Bodies, Government of Punjab (respondent No. 1) cannot be sustained in the eyes of law, and is thus **set aside**, being arbitrary and illegal and is based on the correct proposition of law.

Regarding the impugned Charge Sheet dated 04.03.2016 **(P-9)**, the respondents have conceded the fact by their own conduct that after consideration of the explanation / reply of the petitioner to the Charge Memo and the Report dated 01.07.2016 **(P-11)**, there were no such findings

against the petitioner so as to sustain his culpability on the allegations so levelled and there is no other material brought forth by the respondents in the written statement or during the course of hearing regarding the involvement of the petitioner in respect of the situation other than submitted in the report dated 01.07.2016 **(P-11)** by the Regional Deputy Director Urban Local Bodies Jalandhar, to sustain the charge and the allegations against the petitioner.

In view of the aforestated facts and circumstances, no fruitful purpose will be served to relegate the petitioner to face the proceedings on such charges as per the law and thus the **Charge Memo dated 04.03.2016 (P-9)** cannot be sustained against the petitioner and the same is **set aside** and is **quashed** as such.

9. Resultantly, the petition is **“Allowed”**. The petitioner is held entitled to all consequential benefits arising out of the quashing of the order dated 21.11.2016 **(P-12)** and on account of quashing of the Charge Memo dated 04.03.2016 **(P-9)** alongwith all arrears from the due date. Parties are left to bear their own costs.

September 11, 2018

'dk kamra'

**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>