

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Civil Writ Petition No.21052 of 2017 (O & M)

Date of Decision: September 21, 2018

G.S. Sidhu

..... PETITIONER

VERSUS

State of Punjab & others

..... RESPONDENTS

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. Rajiv Atma Ram, Senior Advocate, with Mr. Ranjit Singh, Advocate, for the petitioner.

Mr. Navdeep Chhabra, Deputy Advocate General,
Punjab.

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Jaspal Singh, J

Through the instant petition preferred under Article 226 of the Constitution of India, petitioner has challenged his order of dismissal dated August 29, 2016 (Annexure P-12) from service as well as sought his reinstatement, seniority, back wages and other emoluments such as pension, gratuity, leave encashment etc. alongwith consequential benefits flowing from his reinstatement with interest @ 18% per annum.

Brief facts of the case giving rise to the instant petition are that petitioner was appointed as Excise & Taxation Inspector on September 27, 1985. He was promoted as Excise & Taxation Inspector on April 05, 1999. During the financial year 2011-12 when he was posted at Barnala,

respondent No.4 – Shalin Walia, Assistant Excise & Taxation Commissioner submitted a complaint dated June 02, 2014 (Annexure P-1) to respondent No.2 – Excise & Taxation Commissioner, Punjab, to the effect that petitioner alongwith one Ms. Dipika, Excise & Taxation Inspector, has created a dubious record due to which the Department has suffered huge revenue loss. Additional Excise & Taxation Commissioner was asked to enquire into the allegations levelled in aforesaid complaint of respondent No.4, who submitted his report dated June 11, 2014 (Annexure P-2) and recommended disciplinary action against petitioner and Ms. Dipika, ETI. Petitioner was suspended vide order dated July 14, 2014 (Annexure P-3), against which, he submitted a request dated July 25, 2014 (Annexure P-4) for its vacation. Petitioner was chargesheeted vide order dated October 28, 2014 (Annexure P-5), to which, he submitted his reply dated January 05, 2015 (Annexure P-6). Thereafter, petitioner was reinstated in service on February 19, 2015 (Annexure P-7), pending enquiry. Enquiry Officer was appointed by respondent No.1 vide order dated March 25, 2015 to look into the charges levelled against petitioner and Ms. Dipika, who submitted his report dated June 17, 2015 (Annexure P-8), on the basis of which, a show cause notice dated August 07, 2015 (Annexure P-9) was issued to the petitioner to submit his reply against the findings recorded by the Enquiry Officer. Petitioner submitted his reply dated September 29, 2015 (Annexure P-11). Respondent No.1 vide impugned order dated August 29, 2016 (Annexure P-12) imposed punishment of dismissal from service upon the petitioner while imposing punishment of stoppage of four increments with cumulative effect upon Ms. Dipika, ETI.

Heard learned counsel for the parties and perused the record but this Court finds no legal substance in the submission made by learned counsel for the respondents.

Firstly, impugned order is not sustainable in the eyes of law merely on the ground that it is a non-speaking order. It is only based on the findings of the enquiry officer. It is obligatory for the Disciplinary Authority to examine the findings of the Enquiry Officer. It is well settled that charges in the departmental proceedings are not required to be proved like a criminal trial. The Enquiry Officer performs a quasi-judicial function and he must arrive at a conclusion that there has been preponderance of probability to prove the charges on the basis of materials on record. The impugned order does not disclose any application of mind at the hands of the Disciplinary Authority. The requirement would be to delve into the matter and to be satisfied that the findings returned against the delinquent are based on some cogent material. Every administrative authority is under legal obligation to record sufficient reasons in support of the order passed due to twin objectives viz. firstly every person whose cause is being decided is entitled to law to know as to what was the reason which weighed with the authority while declining the claim; secondly whenever an administrative order is put for judicial scrutiny, the court is in a position to know as to what was the reason for passing the impugned order. An order without reasons is like a body without soul. The aforesaid views taken by this Court also find support from the judgment rendered by the Hon'ble Apex Court in ***Ram Phal vs. State of Haryana, 2011(6) RCR (Civil) 1174*** wherein the following observations have been made:-

“The duty to give reasons for coming to a decision is of decisive importance which cannot be lawfully disregarded. The giving of the satisfactory reasons is required by the ordinary man’s sense of justice and also a healthy discipline for all those who exercise power over others. This Court in **Raj Kishore Jha vs. State of Bihar** has stated:

19..... Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless.”

Moreover, the issues raised by the delinquent official are required to be dealt with. It was the duty of the punishing authority to objectively consider and deal with the contentions raised by the delinquent in his representation and come to its own conclusion. It is not sufficient adherence to the principles of natural justice only to observe that reply is considered and found having no merit without recording any reasons and order of imposing punishment is passed. Reference in this regard can be made to **P.K. Khanna vs. National Fertilizers Ltd., 2005(2) SCT 642**.

It is essential for the punishing authority to apply its mind and record specific finding as to whether the conduct of the delinquent official was the gravest conduct requiring his dismissal from service. In the absence of such findings, punishment order cannot be sustained. Considering the law referred to above, this Court is of the considered view that impugned order suffers from patent illegality and is a non-speaking order.

Secondly, order of dismissal was passed prior to approval of Punjab Public Service Commission PPSC, on April 22, 2016. Though, approval of PPSC was obtained vide order dated August 24, 2016, a bare perusal of impugned order dated August 29, 2016 shows that Punishing

Authority had pre-determined the imposition of punishment. The relevant part of order dated April 22, 2016 as reproduced in impugned order dated August 29, 2016 reads as under:-

“6. Despite having served the notice of personal hearing on 22.4.2016, Shri Gurtej Singh, Excise and Taxation Officer did not come present before the competent authority. During the personal hearing the Additional Chief Secretary (Taxation) and Excise and Taxation Commissioner, Punjab were also present. After perusing the case record, findings of the enquiry officer and considering the same on fact, the competent authority passed the following order:-

“Keeping in view the facts of the case and findings of enquiry officer, I order to impose the punishment of dismissal from service to Shri Gurtej Singh, Excise and Taxation Officer and stoppage of 04 increments with cumulative effect from Smt. Dipka, Excise & Taxation Inspector under the relevant provisions of Punjab Civil Services (Punishment and Appeal) Rules, 1970.”

The aforesaid order further reveals that case of petitioner was thereafter sent for approval to the PPSC on May 06, 2016 vide Department letter No.2/43/2014/ET1(2)8995. The aforesaid facts clearly show that punishment authority was pre-determined to dismiss the petitioner from service and it did not feel the necessity to take prior approval of PPSC though petitioner was a Group-A officer. Moreover, PPSC did not grant any opportunity of

hearing to the petitioner before giving approval for dismissal of petitioner. The respondent – State also did not convey the approval granted by the PPSC. State also did not grant any opportunity of hearing to petitioner with regard to approval received from the PPSC for his dismissal. The Hon’ble Apex Court in **S.N. Narula vs. Union of India & others, 2011 SCC 591** held that where an employee was not communicated the advisory opinion of the Public Service Commission, it would lead to violation of the principle of natural justice. Thus, impugned order has been passed without the petitioner being put to notice of the advice received from PPSC. He was unaware that a recommendation for his dismissal had been made which was to be passed against him. Similar view has been taken by the Division Bench of this Court in **Dr. Vijay Khariwal vs. State of Punjab & another, 2013(4) SCT 302** and **Union of India & another vs. Maya Ram & others, 2016(1) SCT 275**. This Court is of the considered view that it was incumbent upon the punishing authority first to seek approval of the concerned authority i.e. PPSC and if approval is accorded by the PPSC, then it was obligatory upon the punishing authority to convey the same to the petitioner so that he may take appropriate remedial action which has not been done in the instant case. Thus, action of the respondent – State is unsustainable in law being violative of the principles of natural justice.

Thirdly, impugned order (dated August 29, 2016) has been passed only two days prior to petitioner’s retirement on superannuation i.e. august 31, 2016. Long service rendered by the petitioner, amounting to 31 years, was required to be kept under consideration while passing the impugned order especially when co-employee has been imposed penalty of stoppage of four increments only. No distinction has been made why the

penalty of dismissal is being imposed upon the petitioner whereas only four increments have stopped of the co-employee/delinquent official. Thus, this Court is of the considered view that neither principles of natural justice have been adhered to by the punishing authority of PPSC nor an ample opportunity can be said to have been afforded to the petitioner before passing the order of his dismissal from service. Rather, impugned order has been passed with pre-determined mind as is evident from Order dated April 22, 2018 which has been reproduced in earlier part of this judgment. Thus, only conclusion which can be derived from the aforesaid discussion is that impugned order whereby petitioner was dismissed from service is not sustainable in the eyes of law and is liable to be quashed.

As an upshot of the aforesaid discussion, instant petition is allowed. Impugned order dated August 29, 2006 is set aside with further direction to the respondents to treat the petitioner reinstated with seniority and he shall be entitled to back wages and other emoluments such as pension, gratuity, leave encashment etc. alongwith other consequential benefits flowing from his reinstatement within a period of two months from the date of receipt of a certified copy of this judgment, failing which, petitioner shall be entitled to interest @ 9% per annum from the date of filing of this petition till actual payment.

No order as to costs.

September 21, 2018
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No