

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

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RSA No.5129 of 2014

Date of decision: February 07, 2018

The Union of India and others

.....Petitioners

Versus

Daljit Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Anil Chawla, Advocate
for the appellants.

Mr. A.D. S. Sukhija, Advocate for the respondent.

P.B. BAJANTHRI, J (Oral)

In the instant appeal, the appellants have questioned the validity of trial Court order dated 13.10.2012 as well as Appellate Court order dated 29.04.2013. Matter relates to dismissal of respondent from service vide order dated 08.09.2003 which was subject matter before the trial Court. Appellants have failed to produce the relevant documents relating to dismissal of the respondent from service. Therefore, inference has been drawn by the trial Court, consequently, the appeal filed by the appellant was also dismissed while affirming the order passed by the trial Court. In the absence of original file relating to dismissal from service dated 08.09.2003, the present appeal cannot be entertained.

Learned counsel for the appellant submitted that on four occasions, respondent was punished. Having regard to the conduct of the respondent, both the Courts below have not appreciated. The four

punishments which were cited by learned counsel for the appellants were not part and parcel of the charge-sheet with reference to the dismissal order. In other words, those references were extraneously material to the dismissal order dated 08.09.2003. Supreme Court in the case of **Mohd. Yunus Khan vs. State of U.P. (2010) 10 SCC 539**, extraneous materials cannot be taken into consideration for imposing penalty or for upholding penalty. Paras 17, 34, 35, 36 & 37 of the said judgment read as under:-

“17. The Tribunal has categorically held that absence of the appellant from duty for such a short span of time was permissible in view of the statutory rules and was bona fide. That finding was not challenged by the respondents any further and attained finality. This finding of the Tribunal leads us to the questions that in case the first punishment of 10 days' punishment drill was unwarranted and illegal; whether any protest against such punishment, authorised the Commandant to enhance the punishment to 10 days confinement in a cell; and whether further disobedience thereof, ought to have enabled the Commandant to initiate the disciplinary proceedings against the appellant. These questions have to be considered keeping in mind that the appellant was a member of disciplined force and the Appellate Authority as well as the Tribunal had very heavily relied on the past conduct of the appellant for considering the proportionality of the punishment, though it had not been a part of the charge-sheet nor was the appellant informed of the same while issuing the second show cause notice, giving him the opportunity to make his representation against the enquiry report.

34. The courts below and the statutory authorities

failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show cause notice, before imposing the punishment.

35. This Court in [Union of India & Ors. v. Bishamber Das Dogra](#), considered the earlier judgments of this Court in [State of Assam v. Bimal Kumar Pandit](#), AIR 1963 SC 1612; [India Marine Service \(P\) Ltd. v. Their Workmen](#), AIR 1963 SC 528; [State of Mysore v. K. Manche Gowda](#), AIR 1964 SC 506; [Colour-Chem Ltd. v. A.L. Alaspurkar & Ors.](#), AIR 1998 SC 948; [Director General, RPF v. Ch. Sai Babu](#), (2003) 4 SCC 331, [Bharat Forge Co. Ltd. v. Uttam Manohar Nakate](#), (2005) 2 SCC 489; and [Govt. of A.P. & Ors. v. Mohd. Taher Ali](#), (2007) 8 SCC 656 and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the Authority may take into consideration the indisputable past conduct/service record of the delinquent for "adding the weight to the decision of imposing the punishment if the fact of the case so required."

36. The appellant joined the service on 10.2.1969 and his services stood terminated vide order dated 8.4.2003. Therefore, the benefit of service rendered by the appellant for more than 34 years stood forfeited. At the time of his removal from service, the appellant was 54 years of age. Thus, he had been visited with

serious punishment on the verge of retirement.

37. In view of the above, we reach the following inescapable conclusions:-

I. Absence of appellant from duty as Guard Commander for 25 minutes was bona fide and permissible under the statutory rules.

II. Imposition of punishment of punishment drill for 10 days for the said absence was unwarranted.

III. Protest by the appellant against the imposition of the said punishment could not warrant enhancement of punishment of the appellant for confinement in cell for ten days.

IV. Disobedience of the enhanced punishment could not, in this case, warrant initiation of disciplinary proceedings by the Commandant concerned against the appellant.

V. The Commandant could not himself become the Judge of his own cause.

VI. The Commandant could not appoint his own subordinate as the inquiry officer.

VII. The Commandant could have referred the matter to his superior officer for appropriate action in terms of Rules 1991.

VIII. Once the Commandant concerned appeared as a witness himself in the enquiry, he could not pass the order of punishment.

IX. The Authority who initiated the disciplinary proceedings against the appellant became a witness before the inquiry officer appointed by him, who is subordinate to him in his office and also accepted the enquiry report and passed the order of punishment. Thus, the order of punishment stood vitiated.

X. The Appellate Authority could not consider the past conduct of the appellant to justify the order of

punishment passed by the disciplinary authority without bringing it to the notice of the appellant.

XI. As the punishment order had been passed in violation of the statutory rules and the principles of natural justice as well, it is rendered null and void. Thus, it remained inexecutable.

XII. Past conduct of an employee should not generally be taken into account to substantiate the quantum of punishment without bringing it to the notice of the delinquent employee.

XIII. The error of violating the principles of natural justice by the Disciplinary Authority has been of such a grave nature that under no circumstance can the past conduct of the appellant, even if not satisfactory, be taken into consideration.”

Constitutional Bench's decision reported in **AIR 1964 SC 506; State of Mysore v. K. Manche Gowda** held that authority who takes a decision to impose penalty with reference to any particular allegation, it is not permitted to take past events unless and until relevant provision provides for it. Para 30 of the said judgment reads as under:

“30. Further, in State of Mysore v. K. Manche Gowda, this Court has held thus:

“8. ... It is suggested that the past record of a government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first stage of the enquiry itself and if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the enquiry officer is only

recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the government servant shall be given a reasonable opportunity to know that fact and meet the same.”

Thus, the appellant has not made out the case.

Accordingly, the appeal stands dismissed.

(P.B. BAJANTHRI)
JUDGE

February 07, 2018
anju rani

Whether speaking/ reasoned: Yes
Whether Reportable: No