

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

LPA No. 383 of 2019 (O&M)

Date of Decision: 20.02.2019

State of Punjab and others

.....Appellants

versus

G.S.Sidhu

.....Respondent

CORAM: **HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE**
 HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present : Mr. Shireesh Gupta, Senior Deputy Advocate General,
 Punjab for the appellants.
 Mr. R.S.Kalra, Advocate, for the caveator-respondent.

KRISHNA MURARI, CHIEF JUSTICE (oral)

CM No. 881-LPA of 2019

Heard. For the reasons mentioned in the application, delay of
112 days in filing the appeal is condoned. Application stands disposed of.

LPA No. 383 of 2019

This intra court appeal under Clause X of the Letters Patent is directed against the judgment and order dated 21.09.2018 passed by the learned Single Judge allowing the writ petition filed by the respondent herein challenging his order of dismissal dated 29.08.2016.

2. Facts in brief relevant for the purposes of adjudication of the controversy required to be noticed are as under:-

Petitioner-respondent was working on the post of Excise and Taxation Inspector. While he was posted at Barnala, a complaint dated 02.06.2014 was submitted against him by the Assistant Excise & Taxation Commissioner for having created dubious record in connivance with another

employee Mrs. Dipika, Excise & Taxation Inspector, which caused huge revenue loss.

3. A disciplinary enquiry was instituted against both of them. Respondent No.1 imposed punishment of stoppage of four increments with cumulative effect on Mrs. Dipika whereas the respondent herein was given punishment of dismissal of service vide order dated 29.08.2016.

4. The dismissal order was challenged mainly on the following grounds:-

- ii) The order dismissing the petitioner from service is perverse on the ground that it does not consider the reply submitted by the petitioner and merely relies upon the findings of the enquiry officer.
- iii) The impugned orders are non-speaking.
- vi) The impugned orders have been passed in violation of the principal of natural justice.
- xiii) The action of the respondent State in deciding to dismiss the petitioner prior to getting approval of the Punjab Public Service Commission is vitiated being contrary to law and hence the impugned order dated 29.08.2016 (Annexure P-12) is unsustainable in law.
- xiv) The petitioner had a right to be heard before the Punjab Public Service Commission gave its advice as mentioned in the impugned order dated 29.08.2016 (Annexure P-12) which was not provided.
- xv) The petitioner was entitled to be supplied a copy of the advice of the Punjab Public Service Commission dated 24.08.2016 (whereby it approved the dismissal of the petitioner) and further the petitioner had a right to be heard on the advice given by the Punjab Public Service Commission before the impugned order of dismissal dated 29.08.2016 could have been passed.

5. Learned Single Judge after analyzing the pleadings of the parties and material brought on record held as under:-

- i) The Punishing Authority failed to apply its mind and record any findings whether the conduct of the delinquent official was such of a grave nature requiring his dismissal from service and the order was passed without even making any reference to the issues raised by the respondent in his reply to the show cause notice.
- ii) The order of dismissal passed on 22.04.2016 was prior to the approval of Punjab Public Service Commission which is dated 24.08.2016. A categorical finding has been returned by the learned Single Judge that order of punishment of dismissal from service was passed on 22.04.2016 and it was thereafter sent for approval to the Punjab Public Service Commission on 06.05.2016.
- iii) Punjab Public Service Commission did not grant any opportunity of hearing to the respondent-petitioner before giving approval for dismissal from service and the approval granted by the Punjab Public Service Commission was not conveyed to the respondent herein and thus the order was in violation of the principles of natural justice.
- iv) The impugned order has been passed only two days prior to the retirement on attaining the age of superannuation and the co-employee who was facing identical charges was only visited with penalty of stoppage of four increments and there exists nothing on record to indicate reasons for this distinction.

6. We have heard Shri Shireesh Gupta, learned Senior Deputy Advocate General appearing for the appellant-State of Punjab and Shri R.S.Kalra, learned counsel for the caveator-respondent.

7. Learned Senior Deputy Advocate General appearing for the State of Punjab could not demolish the finding returned by the learned Single Judge that the impugned order of dismissal is solely based on the findings of the Enquiry Officer without there being any analysis by the Disciplinary Authority of the findings recorded by the Enquiry Officer. On perusal of the impugned order by us we also find that it is devoid of any cogent reasons in support of the conclusion. A perusal of the order would go to show that it reproduces the charge-sheet issued to the answering respondent and the findings of the Enquiry Officer. Though the order records that before taking any decision in the matter an opportunity of personal hearing by the competent authority was afforded but there is no reference of either to any of the averments made by the appellant in his reply to the show cause notice nor any arguments that might have been advanced during the personal hearing. We also find that the order has been passed mechanically in utter disregard to the legal obligation cast upon the Punishing Authority to objectively consider and deal with the contention raised by the delinquent employee either in his reply to the show cause notice or the representation or during the course of oral submissions. In the facts we find no legal flaw in the finding returned by the learned Single Judge that the impugned order suffers from patent illegality being a non-speaking order.

8. Mr. Gupta, learned Senior Deputy Advocate General for the appellant-State of Punjab further contended that the order of dismissal was passed on 29.08.2016 after approval from the Punjab Public Service

Commission and thus the impugned judgment based on the contrary findings by the learned Single Judge is perverse and against the evidence on record.

9. We have considered the arguments advanced and perused the record.

10. Learned Single Judge while recording the findings that the Punishing Authority had pre-determined imposition of punishment has not only relied upon but reproduced the relevant part of the order dated 22.04.2016. We also find it expedient to extract the relevant part which reads as under:-

“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.”

11. It is an undisputed factual position that after the order dated 22.04.2016 was passed by the Punishing Authority the matter was referred to Punjab Public Service Commission for approval which was granted on 24.08.2016. When there is a requirement of prior approval and the authority with a pre-determined mind passed the punishment order and the approval was obtained subsequently, it will vitiate the dismissal order and thus has been rightly set aside by the learned Single Judge.

12. Learned counsel appearing for the appellant further could not dispute the factual position that neither the Punjab Public Service Commission granted any opportunity of hearing to the respondent herein nor the State Government granted any opportunity of hearing with regard to the approval received from the Punjab Public Service Commission for dismissal.

The fact being undisputed again is in violation of the principles of natural justice as held by the Hon'ble Apex Court in the case of ***S.N.Narula v.***

Union of India and others 2011 SCC 591, relied upon by the learned Single Judge in the impugned judgment. Thus the learned Single Judge rightly set aside the order on the ground that the impugned dismissal order was passed in violation of the principles of natural justice.

13. Further learned Senior Deputy Advocate General appearing for the State of Punjab also could not point out any such fact or material from the record to demonstrate that the nature and gravity of charges levelled against the answering respondent and the co-employee Mrs. Dipika were in any manner different so as to justify imposition of two different penalties on them. Reference may be made to the pronouncement of the Hon'ble Apex Court in the case of ***Sengara Singh v. State of Punjab 1983(4) SCC 225*** where in the absence of any distinction between two sets of employees; one those dealt with leniently and others dealt with severely, it has been held that those who have been awarded serious punishment stand discriminated and in such a case Court must intervene.

14. In view of the above facts and discussion we are of the considered opinion that the judgment of the learned Single Judge does not suffer from any such infirmity or illegality which may require any correction in an intra-court appeal. The appeal thus being devoid of merits stands dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

20.02.2019
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No