

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 15.11.2019****CWP No.13987 of 2015 (O&M)**

Vinod Kumar Kadyan

...Petitioner

Vs.

Hon'ble High Court of Punjab & Haryana at Chandigarh through its
Registrar

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Satya Vir Singh Yadav, Advocate, for the petitioner.

Mr. Sapan Dhir, Advocate, for the respondent.

RAJIV NARAIN RAINA, J.

1. Vinod Kumar Kadyan was an employee of this Court joining as Judgment Writer in 1996. In February 2006, he was charge-sheeted for misconduct. He denied the allegations. A regular departmental enquiry was instituted, which was conducted by the Additional Registrar (C&E). In her report dated 10.10.2006, the Additional Registrar (C&E) held the petitioner guilty of the charges imputed against him. A show cause notice was issued to Kadyan proposing penalty of dismissal from service. He objected to the enquiry proceedings and the proposal to dismiss him. The case was put to Hon'ble the Chief Justice soliciting orders, being the Appointing & Disciplinary Authority. However, Hon'ble the Chief Justice made an order on 8.6.2008 that before he passes any order in view of mercy pleaded by

Kadyan, he would like to know from the Hon'ble Judge with whom he was currently working for his antecedents. The order dated 8.6.2008 placed on record by the High Court at p.100 of the paper-book reads as follows:

“Before I pass any order in view of the mercy pleaded by Shri Vinod Kumar Kadyan and in view of the fact that he has stated that he has a daughter who has completed her +2 class; other two sons are school going and wife being not employed, I would like to know from the Hon'ble Judge with whom he is now working, for his antecedents.”

2. In response, the Hon'ble Judge by his note dated 2.7.2009 addressed to Hon'ble the Chief Justice had the following to say:

“I have got confirmed from the delinquent employee [Shri Vinod Kumar Kadyan, Judgment Writer] in writing that his daughter, on completion of +2, is pursuing her higher studies and his two minor sons are studying in school. He has further confirmed that his wife being unemployed, there is no other source of livelihood with the family. As regard to the antecedents of Mr. Kadyan, I wish to inform that he is attached to me since my elevation as a Judge. I have not received any oral or written complaint against Shri Vinod Kumar Kadyan which may impinge upon his integrity or honest. In fact, no complaint whatsoever has been received against him during this period. This fact has been duly confirmed by my Special Secretary and Secretary also. He has been a willing, devoted and dedicated worker, whose work and conduct has always been highly satisfactory.

This is for kind and sympathetic consideration of Hon'ble the Chief Justice.”

3. By taking into consideration this note, Hon'ble the Chief Justice was pleased to pass the following order on 14.07.2008:

“Whereas a regular departmental enquiry was held against Shri Vinod Kumar Kadyan, Judgment Writer of this Court on account of his omission and commission.

Whereas the then Additional Registrar (C&E) was appointed as Enquiry Officer. During the course of enquiry, full opportunity was afforded to Shri Vinod Kumar Kadyan to defend himself. Charge levelled against Shri Vinod Kumar Kadyan was proved. Consequently, a show cause notice was issued to Shri Vinod Kumar Kadyan vide letter No.21175 E./V.B.(3E) dated 2.8.2007 as to why he may not be dismissed from service.

Shri Vinod Kumar Kadyan submitted reply to show cause notice and Hon’ble the Chief Justice after considering his reply to show cause notice has been pleased to impose upon him a penalty that he will not be considered for promotion for five years nor will get any increment during this period. His case for grant of increments and promotion will be considered after five years on the basis of his track record.”

4. Hon’ble the Chief Justice did not exercise his discretion to inflict the extreme punishment of dismissal in a case of imputation of dishonesty on a charge of bribe on the assurance alleged to be given by kadyan to Mr. X for fixing the result of the case pending on the judicial side of the High Court in which he was working as a staff member and instead in a very sympathetic manner chose the penalty by inflicting denying of increments and right of consideration for promotion for a period of 5 years. The future course was ordered to be decided on the basis of track record of the coming 5 years from the date of the punishment order.

5. It is argued on behalf of Kadyan that the increments were not stopped using the expression ‘with cumulative effect’ and accordingly if the

track record of 5 years after passing of the orders dated 14.07.2008 being satisfactory, he had a legitimate expectation of restoration of those increments and a right of consideration for promotion from the date his junior, namely, Harpal Singh Parmar was promoted to the post of Private Secretary; Secretary and Special Secretary during the intervening period when Kadyan was under clouds.

6. The Punjab Civil Services (Punishment and Appeal) Rules, 1970 (for short 'the Rules') prescribe the rules of stoppage of increments as well as withholding of promotion as a minor punishment. The petitioner has a right of restoration based on his track record post-punishment. He relies on the Supreme Court decision in Kulwant Singh Gill Vs. State of Punjab & others, 1991 (2) SCT 30 to differentiate between major and minor punishments.

7. The present case is one of withholding of increments simplicitor without permanent loss cascading down till superannuation or premature retirement, as the case may be. I was told that Kadyan quit his job in December 2017.

8. Kadyan argues on the strength of the Supreme Court decision in DHBVNL Vidyut Nagar, Hissar Vs. Yashvir Singh Gulia, (2013) 11 SCC 173 [Civil Appeal No.6150 of 2013 decided on 30.07.2013] to urge that minor punishment is not a bar on promotion. It is the lament of Kadyan expressed through his counsel that the High Court has treated the minor punishment as virtually a major punishment and denied him the benefits of increments and promotions as per his track record even when he had won his freedom from the yolk of the penalty at the end of August, 2013 with the

dismissal of his representation, the knowledge of which came to him on his requesting information to be supplied through an application filed by him under the Right to Information Act, 2005. He then learnt that Hon'ble the Chief Justice has rejected his claim on 24.09.2013. Feeling aggrieved by the rejection of his claim, Kadyan filed a reconsideration request on 7.7.2014 contending that the minor penalty cannot come in the way of promotion and restoration of increments from the date his junior was promoted. He heard nothing on his representation until he made a fresh request under Right to Information Act for supply of information on the fate of his reconsideration application. The office vide letter dated 28.10.2014 informed him that his case has been again rejected by Hon'ble the Acting Chief Justice on 04.08.2014. In this background of facts and circumstances, the petitioner approached this Court in March, 2015 by way of this petition.

9. On notice, the High Court has put in its written statement contesting the case praying that Kadyan's petition deserves to be dismissed with heavy cost. The respondent has dwelled on the merits of the enquiry and the substance of the charge-sheet. They assert that Kadyan was granted each and every opportunity to defend himself against the charges, but was unable to prove his innocence. The impugned order of penalty was not challenged by the petitioner from 2008 till 2015 and it has attained finality. The petition is not maintainable as the Court cannot sit like an appellate authority to re-appreciate the evidence examined by the competent authorities. The following citations are used against Kadyan:

“(2006) 7 SCC 212; (2006) 2 SCC 373; 2012 (1) CLR 569;
2012 (3) SCT 220; 2011 (4) SCT 353; 2011 (3) SCT 777;

2010 (7) SLR 274; (2007) 7 SCC 236; (1991) 1 SCC 57;
2012 (4) SCT 385 and (1998) 9 SCC 220”

10. It is argued that not only that Kadyan failed to challenge the order dated 14.07.2008, but has questioned it in a ‘very twisted manner’, which cannot be permitted in law. It is highlighted from the order where it is specifically observed that “...*He will not be considered for promotion for five years nor will get any increment during this period...*” Hence, Kadyan’s retrospective claim is misconceived. The respondent admits that upon completion of period of currency of punishment awarded to Kadyan, he was promoted as Private Secretary by office order dated 14.01.2014 which he accepted without any dispute or objection whatsoever. It is the stand in paragraph 4 of the written statement that Hon’ble the Chief Justice passed the order in a very sympathetic manner despite the petitioner deserving more than the punishment awarded to him for his illegal act and conduct. The written statement goes on to an elaborate narration of the substance of the disciplinary proceedings against Kadyan initiated on the basis of a complaint from one Nirmal Singh stating that Kadyan, who while posted with Hon’ble Mr. Justice X had taken Rs.30,000/- as bribe from him for bail as well as dismissal of the case titled as ‘State Vs. Parminder Singh’ under Sections 306, 376, 342 IPC pending in the Court of another Hon’ble Judge (since retired). A preliminary enquiry was conducted by the Joint Registrar (C&E), which held him prima facie guilty of the illegal demand and acceptance of bribe which called for a regular enquiry in a case of illegal gratification, the incident occurring on 17.09.2001. It is not necessary to go into the intricacies of the enquiry or the charges, as the question before this Court is limited to the contention as to whether in the face of the impugned

order dated 14.07.2008, the petitioner is legally entitled to the relief of restitution of pay and promotion for the period from 14.07.2008 to 13.07.2013 and if he had any right to increments falling in between.

11. It is not the case that neither increment nor promotion or its adverse permanent effects will not be considered till the end of service. The consideration had to take place after 5 years on the basis of track record as per the punishment order. It is not the case in the written statement that the track record of Kadyan for the period of 5 years from 2008 to 2013 or thereafter regarding his work and conduct was not satisfactory.

12. The applicability of the 1970 Rules is indisputable in the matter of major and minor punishments and the procedure for imposition of penalties. Mr. Dhir representing the High Court urges that the case of Kadyan does not fall under Explanation (iii) of Rule 4 of the 1970 Rules as the explanation pertains to those cases where promotion was denied owing to the adverse service record or for any such reason, after consideration by the Departmental Promotion Committee. However, in the present case, Kadyan was not considered for further promotion for the period of 5 years as a measure of punishment as the effect and natural consequence of the order of penalty attaining finality.

13. While dealing with this case involving the type of punishment imposed by Hon'ble the Chief Justice, it would be appropriate to reproduce Rule 5 of Part III of 1970 Rules, which prescribes the range of penalties both 'minor' and 'major', which can be imposed on a Government employee. These are as under:

“5. Penalties:- The following penalties may, for good and sufficient reasons, and as hereinafter provided, be imposed on a Government employee, namely:-

Minor Penalties

- (i) Censure;
- (ii) Withholding of his promotions;
- (iii) Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
- (iv) Withholding of increments of pay without the cumulative effect;

Major Penalties

- (v) Withholding of increments of pay with cumulative effect or reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) Reduction to lower time-scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government employee to the time-scale of pay, grade, post or service from which he was reduced, with or without service directions regarding conditions of restoration to the grade or post or service from which the Government employee was reduced and his seniority and pay on such restoration to that grade, post or service;
- (vii) Compulsory retirement;
- (viii) Removal from service which shall not be a disqualification for future employment under the Government;
- (ix) Dismissal from service which shall ordinarily be a disqualification for future employment under the Government.”

14. There is a clear distinction between ‘withholding of increments of pay without cumulative effect’ and ‘withholding of increments of pay with cumulative effect’. The first is minor and the second major. In the

order imposing penalty, there is absence of use of the words 'cumulative effect'.

15. There is a rule against passing of amalgam of punishment orders by way of mix and match when the range of punishments in the Rules are clear and unambiguous and open to infliction by selection when it was always open to the disciplinary authority to choose one which fits the misconduct most suitably as per the discretion of the punishing authority.

16. If the punishing authority withholds increments pure and simple for a fixed period, the employee will get the monetary benefits, which have been kept on hold, on the expiry of the period. Financially this is a temporary punishment without future or permanent loss. But this is in the case if the penalty was imposed by way of major punishment, and accordingly the words 'cumulative effect' cannot be read into the impugned order dated 14.07.2008 and hence I think Mr. Yadav appearing for Kadyan would be correct in saying that his client had a legitimate expectation for restoration of 5 increments when the sun came back from the passing clouds after an eclipse of 5 years. This is also to my mind the legal position. Therefore, the Court cannot hold against Kadyan for not challenging the order dated 14.07.2008 once he was satisfied with the penalty imposed on him by not calling it in question in a court of law apart from making representations for restoration of certain benefits as prayed for which have been rejected twice over and lastly by a non-speaking order.

17. There is another facet which is the key to the understanding of this case the proper perspective. Indisputably, no specific order was passed by the respondent on due consideration after expiry of 5 years which was the

hallmark of the punishment. There are thus two ways to meet this contingency. One is to remand the case to the disciplinary authority to consider “the track record of 5 years” clouded by the order of punishment order, and secondly, to ignore this step because nothing has been brought to the notice of this court regarding the work and conduct of Kadyan being not satisfactory during the period of 5 years or thereafter. It is reasonably expected as satisfactory. Choosing the second option appears to me to be the most equitable exercise of judicial discretion to reduce administrative time and energy instead of prolonging the matter by resort to the first method, as nothing more than a perusal of service record and the confidential rolls for 5 years is required to be seen to take a final decision on the consideration. This process of thinking had formed the basis of order issuing notice in this case on 23.07.2015.

18. In short, as far as increments are concerned, Kadyan is held legally entitled to recover all his monetary dues as a result of restitution of the increments on the expiry of period of minor punishment.

19. However, as far as promotion with retrospective effect from the date his junior was promoted is concerned, I am unable to be persuaded to grant Kadyan this relief. During the currency of period of punishment, Kadyan had no right of promotion in view of settled law and as explained recently in the Full Bench decision by this Court in L.P.A. No.1852 of 2016 titled “The High Court of Punjab and Haryana Chandigarh Vs. Jaswant Singh” decided on 03.09.2019 and therefore granting promotion retrospectively would be putting premium on misconduct. If Kadyan was aggrieved, then the cause of action arose to him on 14.07.2008 as far as

promotion is concerned. The case of retroactive promotion is also barred by the principles of delay and laches in addition to other reasons. If promotion/s were to be granted retrospectively to Kadyan, it would also affect 3rd party rights and unsettle the settled seniority in successive cadres. The affected parties are not before the Court. No order can be passed behind their back.

20. For the foregoing reasons, this petition is partially allowed. The petitioner is held entitled to restoration of 5 increments w.e.f. 13.08.2013 with consequential re-fixation of pension and retirement dues. It is made clear that Kadyan would not be entitled to any interest on the amounts as he has partly succeeded on the basis of interpretation of the order imposing punishment on the distinction drawn between the effect of major and minor punishments and Kadyan's legitimate expectations to the fruits delayed by 5 years. I may observe that had Hon'ble the Chief Justice dismissed Kadyan, as proposed by the Committee of Judges', he may have received very little help from the Court.

15.11.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes/No