

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

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**CWP No.18442 of 2016
Date of Decision : 03.04.2019**

Dayanand

....Petitioner

v/s

The State of Haryana and others

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present: Mr. R.K. Verma, Advocate for the petitioner.
Mr. Harish Rathee, Senior DAG, Haryana.

B.S. Walia, J.,

[1] Prayer in the writ petition under Article 226/227 of the Constitution of India is for the issuance of a writ of Certiorari for quashing Order (Annexure P-3) dated 30.06.1989, passed by respondent No.3, as well as order (Annexure P-7) dated 22.05.2006, passed by respondent No.2 and to grant consequential benefits in view thereof.

[2] Brief facts of the case, leading to the filing of the writ petition are that the petitioner who was working as Jail Warder in District Jail, Karnal was served with a charge-sheet by the Superintendent, Head Quarter (Jail), Ambala vide Annexure P-1 dated 30.05.1989 on the allegations that on the night of 8/9.05.1989, while on duty from 9.00 p.m. to 12.00 p.m. at beat No.2 in the Jail, he was found by the Assistant Superintendent (Jail) Shri Ishwar Singh at 10.00 p.m. sleeping between wheat bags by covering himself with a bed sheet. The petitioner submitted reply to the charge-sheet on 05.06.1989 contending that his brother had died 10 days ago suddenly due to which, he was suffering from fits, due to which he had fallen down and in the meantime, the Assistant

Superintendent (Jail) came on inspection and alleged him to be sleeping to which he had replied in the negative. Eventually, respondent No.3 imposed punishment of stoppage of one annual increment with cumulative effect upon the petitioner vide order (Annexure P-3) dated 30.06.1989 without conducting any regular enquiry in the matter, only after considering the reply to the charge-sheet and the comments from the Superintendent, District Jail, Karnal.

[3] Aggrieved against order (Annexure P-3), the petitioner filed an appeal before the DGP (Prisons), Haryana/respondent No.2 vide Annexure P-4 on 26.10.1989. However, the appeal was not decided despite numerous reminders including Annexure P-5 dated 01.10.2005, whereupon the petitioner filed CWP No.3338 of 2006 titled as 'Dayanand versus State of Haryana and others, which was disposed of vide order Annexure P-6 dated 03.03.2006, directing respondent No.2 to decide the appeal of the petitioner within a period of two months from the date of receipt of order.

[4] That pursuant to receipt of order (Annexure P-6), respondent No.2 rejected the appeal filed by the petitioner vide order dated 22.05.2006 but copy of the same was claimed as not having been supplied to the petitioner. The petitioner claims that he could get copy of the order only by moving an application through his Advocate under the RTI Act, 2005. Eventually, order Annexure P-7 dismissing the appeal was supplied to the petitioner's counsel by the State Public Information Officer-cum-Chief Probation Officer, office of the Director General of Prisons, Haryana, Panchkula on 20.04.2016.

[5] Sole submission of learned counsel for the petitioner is that imposition of punishment of withholding of one annual increment with cumulative effect is a major penalty and could not have been imposed without

made to the provisions of the Punjab Jail Department Executive Staff (Punishment & Appeal) Rules, 1943 (hereinafter referred to as the Rules) although reproduction in the writ petition is of some other rules. Relevant extract of the Rules is reproduced as under:-

1. (1) These rules may be called the Punjab Jails Department Executive Staff (Punishment and Appeal) Rules;

x

(3) Shall apply to the following classes of officers (hereinafter referred to as “subordinate officers”)-

x x x x x

(f) Warders

x x x

3. Departmental punishments. – Every subordinate officer who shall at any time be found to have been guilty of any breach of any law, rule, regulation, direction or order for the time being in force, in regard to the duties or any of the duties, which he is required to perform, or the manner in which he is to perform them, or any of them, shall be liable to be punished by any one or more of the following punishments, namely (Punjab Government No.32476-Jails, dated 5th November, 1930):-

x x x x

(e) withholding of increments or promotion including stoppage at an efficiency bar;

(f) reduction to a lower post or time-scale or to a lower stage in a time-scale;

x x x x

10. In enquiring into and passing orders upon charges against subordinate officers, in which, if proved, the punishment is likely to be under clauses (a), (b), (c), (e) and (g) of rule 3. It shall be sufficient for the Superintendent to record the name and the office of accused person, the nature of the offence and the final order passed.

11. (1) *Without prejudice to the provisions of the Public Servants (Inquiries) Act, 1850, no order awarding a punishment specified in clauses (d), (f), (h), (i) and (j) of rule 3 shall be passed against a subordinate officer other than an order based on facts found proved by a criminal court unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires and if the authority so direct, an oral inquiry shall be held. At the enquiry oral evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross-examine the witnesses in person and to have such witnesses called as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reasons to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and the statement of the findings and the grounds thereof;*

Provided that –

- (a) this sub-rule shall not apply where the person concerned has absconded, or where it is, for other reasons, impracticable to communicate with him;*
- (b) all or any of the provisions of this sub-rule may, in exceptional cases, for special and*

sufficient reasons to be recorded in writing be waived, where there is a difficulty in observing exactly the requirements of this sub-rule and those requirements can be waived without injustice to the person charged.

(2) No subordinate officer who is called upon to produce his defence as to charges which form the subject matter of any enquiry against him, shall be allowed to engage counsel:

Provided that if the charge or charges are likely to result in the dismissal of a subordinate officer such officer may, with the sanction of the enquiring officer, be represented by counsel:

Provided further that if in an enquiry, counsel is engaged on behalf of Government, a subordinate officer against whom the charges are being enquired into, shall be entitled to engage counsel.

- (3) At any time after hearing the evidence in support of the charge, the Superintendent may, if he is of the opinion that a prima facie case has been made out, suspend the accused officer from his office.*
- (4) In any case in which time is given to the accused person to prepare his defence, the Superintendent shall furnish the accused person with a written order to file a written statement of defence within the time allowed to him.*
- (5) If the accused person is a Deputy, Senior, Assistant or Assistant Superintendent or European Warder, the Superintendent shall, after complying with provisions noted above, submit the record for the orders of the Inspector-General, and in any other case, he shall pass final orders either acquitting or convicting and punishing the accused person.*

- (6) *When any subordinate officer is dismissed, he shall, without undue delay, be supplied with a copy of the final orders passed, but not of the record of proceedings.*
- (7) (a) *No subordinate officer shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him, unless such punishment is imposed on the ground of conduct which has led to his conviction on a criminal charge, or, unless the authority empowered to impose such punishment is satisfied, for reasons to be recorded in writing, that to allow an opportunity as aforesaid is not reasonably practicable in the particular case.*
- (b) *In the case of dismissal or removal of Head Warders and Warders by the orders of a Superintendent other than a Superintendent of a Headquarters Jail, the confirmation of the order by the latter is necessary.”*

A perusal of the aforementioned Rules reveals that punishment of withholding of one increment with cumulative effect amounts to a major penalty and the same can be imposed only after conducting a regular departmental enquiry as envisaged under the Punjab Jail Department Executive Staff (Punishment & Appeal) Rules, 1943.

[6] Learned Senior Deputy Advocate General, Haryana, on the other hand contended that the track record of the petitioner is very poor and he has been imposed a number of punishments. Besides the facts of the case go to show the truth of the allegations leveled against the petitioner. Apart from the aforementioned submissions, no other point has been argued.

[7] I have heard learned counsel.

[8] It is settled law that imposition of punishment of stoppage of annual increment with cumulative effect is a major penalty and same can only be imposed only after conducting a regular departmental enquiry as envisaged under the rules. Admittedly regular departmental enquiry was not conducted in the instant case before imposing punishment of withholding of the increment with cumulative effect.

[9] Having considered all aspects of the matter and in view of the position noted above as well as the reasons given as under, I am of the considered view that allowing the writ petition by setting aside the impugned order alone would not suffice especially in view of the stand in communication dated 12.05.1989 from the petitioner to the Superintendent, District Jail Karnal that due to death of his brother he was greatly disturbed as a result of which he lost consciousness and fell down and remained in said state for about 10 minutes and during this time Shri Ishwar Singh Assistant Superintendent Jail came to the spot and told him that he had called out to him a number of times but he could not respond and it was only after Shri Ishwar Singh left and he took some water that he came to his senses. Further, in reply dated 05.06.1989 to the charge sheet, the petitioner took up the stand that when Assistant Superintendent Jail Ishwar Singh came on the round and awakened him and asked as to why he was sleeping, he replied in the negative as he did not know as to what had happened to him and that he had covered himself with bed sheet only to protect himself from mosquitoes and was not using the same for sleeping and due to this helplessness he was found committing mistake otherwise he had not committed the mistake and that in the circumstances, he be pardoned. In the facts and circumstances noted above, as also inordinate

not ousting the petitioner on ground of delay and laches in view of the writ petition filed in the year 2016 in respect of cause of action accruing in the year 2006, coming up for final hearing in the year 2019, liberty be granted to the respondents to conduct regular enquiry so as to enable the truth to be ascertained. Accordingly, while allowing the writ petition and setting aside impugned order Annexure P-3 dated 30.06.1989 as upheld vide order Annexure P-7 dated 22.05.2006, liberty is granted to the respondents to conduct regular enquiry qua the charge sheet already served on the petitioner with the same to be concluded within six months from the date of receipt of certified copy of order. On conclusion of the regular enquiry within the stipulated period of time, fresh orders be passed in accordance with law. If on conclusion of the regular enquiry it is found that the charges are not proved, then the petitioner be released all consequential benefits which have been withheld on account of imposition of punishment of withholding of one increment with cumulative effect within a period of three months from the date of passing of final orders in respect thereto failing which the same shall be payable along with interest @ 6 % per annum with effect from the date the same were withheld till date of payment.

[10] Writ petition ***allowed*** with the aforementioned directions.

(B.S. Walia)
Judge

April 03, 2019
'Rajneesh'

Whether speaking/reasoned	: Yes/No
Whether reportable	: Yes/No