

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

**CWP No. 1489 of 2017 (O&M)
DATE OF DECISION : 20.08.2019**

GURCHARAN SINGH

...Petitioner

VERSUS

UNION OF INDIA AND OTHERS

...Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. S. M. Sharma, Advocate,
for the petitioner.

Ms. Balwinder Kaur, Advocate,
for the respondents.

ARUN MONGA, J. (ORAL)

CM NO. 11629 OF 2019

For the reasons mentioned in the application, same is allowed and affidavit of the petitioner to withdraw the statement recorded in order dated 11.07.2019 and reply to Show Cause Notice given to the department is taken on record.

MAIN CASE

1. The short controversy involved in this case is, whether petitioner having once undergone lessor punishment awarded to him by the disciplinary authority could be issued a fresh notice, after a lapse of a year and a half, asking him to show cause as to why said punishment be not enhanced into termination/dismissal from service.

2. In somewhat similar circumstances, I have already expressed my views vide judgment rendered in *CWP No.18190 of 2008* decided on 03.05.2019 titled as "*Rahul Bhardwaj v. Union of India and others*", observing that once the delinquent employee has

undergone punishment, it cannot be enhanced *suo-motto*, particularly after a lapse of year and a half, as in the present case. Relevant extract of judgment, *ibid*, is reproduced herein below :

"9. As reflected from the written statement, concededly enhancement of the punishment was awarded vide order dated 08.06.2007 (Annexure P-11) after a period of one year of passing of the first punishment order dated 29.04.2006 (Annexure P-6).

10. In the interregnum, the petitioner had already undergone the original punishment awarded to him vide order dated 29.04.2006 (Annexure P-6). However, the Appellate Authority in exercise of the powers conferred to him under Rule 29 (d) of CRPF Rules, 1955 enhanced the punishment disregarding the fact that the petitioner had already undergone the original punishment awarded to him.

11. Article 20 of the Constitution of India clearly prohibits two punishments for the same offence. Awarding the punishment, though by way of enhanced penalty, after a lapse of one year when the delinquent employee has already undergone punishment amounts to double jeopardy.

12. Learned counsel for the petitioner has relied upon a judgment rendered by this Court in case titled as **Mohd. Latif. Vs. Union of India and others, 2010 (5) SLR 74**. The relevant whereof is extracted hereinbelow:-

" Clause 2 of Article 20 clearly prohibits two punishments for the same offence. In the present case, admittedly, two punishments have been awarded to the petitioner one for imprisonment coupled with forfeiture of pay and allowances and 'packdrill' and the other the removal from service. Had the authorities enhanced the punishment prior to implementation of the first award of the punishment, it could have been justified in terms of Rule 29 (d). But the first punishment having been

enforced and implemented, it was not permissible to have imposed second punishment, which is the extreme punishment when the petitioner had already undergone the imprisonment and other related punishments imposed upon him. There is another reason to quash the impugned order. The first punishment was awarded on 04.07.1984 and executed at the same time. The first show-cause notice was issued to the petitioner after 1 year and the second show-cause notice after about 2 years. No reasons have been disclosed by the respondents for such a long delay in initiating proceedings for enhancement of the punishment. This speaks of the total arbitrariness, whims and fancy of the respondents. The impugned order is not justified under any circumstances. It is stated in the writ petition that the petitioner was due, to retire on 04.05.1987. Thus, the petitioner was entitled to continue till he attained the age of superannuation."

13. *I am in respectful agreement with the observations made in the above judgment and in the entirety of the circumstances, I am of the view that enhancement of the punishment to the petitioner after a lapse of one year does not stand judicial scrutiny and is not tenable. Particularly, when he had already undergone the original punishment awarded to him by the disciplinary authority.*

14. *Even otherwise, I am of the opinion that awarding the punishment of removal from service is akin to economic death penalty for an employee. Not only it is loss of livelihood for the employee, but the entire family is reduced to live in penury and suffers the said punishment. Assuming the delinquency attributed to petitioner to be gospel, the punishment awarded to him vide order dated 08.06.2007 (Annexure P-11) is highly disproportionate and unduly harsh".*

3. The impugned notice herein is wrong and unsustainable as after implementation of sentence awarded, there is no provision under the statutes to enhance the sentence.

4. In view thereof, the impugned show cause notice being not sustainable in the eyes of law is set-aside with all necessary consequences.

(ARUN MONGA)
JUDGE

AUGUST 20, 2019
shalini

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