

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 24047 of 2015
Date of Decision : 11.04.2019

Vijay Kapoor

...Petitioner

Versus

Haryana Agro Industries Corporation Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Manav Bajaj, Advocate for
Mr. Sumeet Goel, Advocate for the petitioner.

Mr. Prateek Gupta, Advocate for the respondents.

Harsimran Singh Sethi, J.(Oral)

In the present writ petition, the challenge is to order dated 09.12.2013 (Annexure P-10) by which punishment of recovery of ₹1,03,542.60 alongwith interest has been imposed upon the petitioner.

Learned counsel for the petitioner states that a total amount of ₹2,40,328/- which includes interest, has been retained by the respondents while making payment of leave encashment to the petitioner after his retirement.

The facts as stated in the writ petition are that petitioner was working as a Clerk with respondent No. 1. On 29.09.2004, a charge-sheet was served upon the petitioner, who was at the relevant time deployed as a Mandi Inspector-cum-Store Keeper at Tohana Mandi, under Clause 21 of

the certified standing order of the Corporation. The allegations against the petitioner in the charge-sheet was that he was liable to reimburse 70% of the loss caused to the Corporation on account of shortage of 8114 bags of 50 kg. each, which shortage was only due to the negligence of the petitioner and, hence, he was liable to make good the Corporation amount of ₹1,03,542.60.

During the pendency of the enquiry, respondent-Corporation filed a civil suit against the petitioner claiming the recovery of ₹30,21,073.60 on 24.11.2006. Amount of ₹1,03,542.60 on account of shortage of 8114 gunny bags was also included in the recovery suit filed by the Corporation against the petitioner alongwith the allegations as alleged in the charge-sheet. Before the Enquiry Officer could complete the enquiry in respect of the charge-sheet, suit filed by the Corporation against the petitioner was dismissed on 06.08.2010 holding that petitioner is not liable to pay the said amount for which the recovery suit was filed. Against the said dismissal of the suit, an appeal was preferred by the Corporation on 07.09.2010, which was also dismissed by the District Judge, Fatehabad on 21.03.2013 (Annexure P-4).

After the dismissal of the suit filed by the Corporation against the petitioner, the enquiry, which was initiated against the petitioner, Enquiry Officer submitted his report on 16.09.2010. In the said report, petitioner was held guilty of the charge that the petitioner was accountable for shortage of 8114 bags of 50 kg. each. Copy of the said enquiry report was sent to the petitioner for his comments and while forwarding his comments, petitioner informed respondents that allegations of loss caused

by the petitioner in respect of 8114 bags shortage has already been found to be incorrect by the Competent Court of Law still, on 09.12.2013 i.e. after the suit filed by the Corporation for recovery of the same amount was not only dismissed and even the appeal had been rejected, a punishment was imposed upon the petitioner holding the petitioner guilty of the said loss of 8114 bags and order of recovery of ₹1,03,542.60 alongwith interest was passed. Against the said order passed in the enquiry by the disciplinary authority, petitioner preferred an appeal, which was dismissed by the Board of Directors on 30.03.2015 (Annexure P-14). After noticing the fact that allegation of loss of 8114 bags for which punishment was imposed, was not proved before the Competent Court of Law in a suit filed by the Corporation against the petitioner, still the Board of Directors only stated that they did not find any force in the appeal and rejected the same.

In the meantime, Corporation also filed a Regular Second Appeal against the dismissal of their suit seeking recovery against the petitioner as well as against the order rejecting the appeal of the Corporation. RSA No. 3070 of 2013 came to be decided by this Court on 04.03.2014(Annexure P-5), the RSA was also dismissed in limine.

In the present writ petition, the petitioner is challenging the order dated 09.12.2013 (Annexure P-10) imposing the punishment as well as order dated 30.03.2015 (Annexure P-14) rejecting the appeal against the said order dated 09.12.2013 and also order dated 12.02.2015 (Annexure P-17) by which a sum of ₹2,40,328/- has been recovered from the pensionary benefits of the petitioner.

Upon notice of motion, respondents have put in appearance and

filed their reply. In the reply, respondents have stated that as the charge against the petitioner with respect of 8114 gunny bags which were not collected by the petitioner, due to which the Corporation suffered a loss of ₹1,03,542.60, the amount has rightly been recovered from the petitioner after holding due enquiry into the allegations. It has been alleged that the suit, which was filed by the Corporation, was primarily rejected on the ground that the charge-sheet issued to the petitioner on the same ground was not finalized and, therefore, action of the Corporation was justified in imposing punishment upon the petitioner even though their suit on the same allegations was dismissed.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It is a matter of fact that after serving a charge-sheet upon the petitioner on the allegation of suffering a loss to the tune of ₹1,03,542.60, Corporation had filed a civil suit in the year 2006 for recovery of the said amount in respect of shortage of 8114 gunny bags. The allegations, which were alleged against the petitioner for recovery of the amount i.e. shortage of 8114 gunny bags were identical in the disciplinary proceedings as well as in the civil suit. The Competent Court of Law after considering the pleas raised by the Corporation gave a categorical finding that the charge of loss, which the Corporation was claiming on account of shortage of 8114 bags, was not supported by any evidence, rather it was admitted by the official of the Corporation that those bags were never received by the petitioner at any stage. The relevant portion of the finding of the civil Court in this regard is as under:-

10. *I have heard learned counsel for the plaintiff and after going through the oral as well as documentary evidence available on the file and after going through the averments of the plaint I have noted that the case of the plaintiff Corporation is that due to the major misconduct of the defendant, the plaintiff Corporation has suffered huge loss and now the defendant is liable to pay suit amount to the Corporation i.e. plaintiff. In this regard, I have considered that there are charge sheet issued to the defendant which is Ex. P1 to Ex. P4 wherein allegations have been leveled against the defendant. Charge sheet Ex. P1 has been issued because there was a shortage of 8114 bags of empty bardana as same was not collected from the Aradhtis. In the light of above allegation the plaintiff has to prove the physical verification report of Shri J.K. Jain, the then DGM of the Corporation however, this Officer has not stepped in the witness box to prove his physical verification on the file. It is also relevant to mention here that in statement of DW2 and DW3 recorded during the enquiry initiated against the defendants, they have categorically stated that the bardana was not ever received by the defendant nor distributed by him to the Aradhtis their statements are available on the file as Ex. DW2/E and Ex. DW3/A respectively. Even in the preliminary enquiry the Enquiry Officer comes to the conclusion that the charge was with Raj Kumar and not formally handed over to Vijay Kumar he is only carry out some operation work and only maintained the register. This shows that the defendant was never handed over the charge of empty bardana and same was never distributed by him to the Aradhtis. Since this allegation could not be proved by the plaintiff by examining Shri J.K. Jain, therefore, this*

allegation against the defendant cannot stand proved.”

Not only this, the said findings were upheld in appeal and findings recorded by the High Court on the same allegations. Relevant portion of the order is reproduced as under:-

“I have considered the contentions of learned counsel for the appellant.

Both the courts below have concurrently held that there is no cogent evidence to show that bardana was either received by the defendant or the same was distributed by him to different commission agents. It has also been recorded that during preliminary enquiry, it was found that charge was not formally handed over to defendant and the same remained with Raj Kumar (DW6). The plaintiff could not establish that the defendant had failed to collect empty bardana from different commission agents and maintain the stock in a proper manner leading to huge loss caused to the plaintiff. It has also been held that Mr. J.K. Jain, the then D.G.M. is stated to have conducted physical verification and gave a report in this regard, has neither stepped in witness box nor the report given by him saw the light of the day.”

Therefore, on the same allegations, once a Competent Court of Law had recorded findings and that too before the enquiry report was given by the Enquiry Officer in the disciplinary proceedings, the respondents could not have ignored the order passed by the Competent Court of law while imposing the punishment on the same allegation upon the petitioner.

Once it is admitted by the counsel for the respondents that the allegations in the civil suit and in the charge-sheet were identical and the defence, which was produced by the Corporation, is the same before the Civil Court and before the Disciplinary Officer, the preference could not be

given to the Enquiry Officer's report, which was submitted by the Enquiry Officer and that too after the finding had already been recorded by the Competent Court of Law in respect of the said allegations, wherein the same allegation was not substantiated by the Corporation to claim the recovery of an amount of ₹1,03,542.60. It is a settled principle of law that once a finding has been recorded by a Competent Court of Law, the same cannot be overturned subsequently by an Enquiry Officer on the same allegations. Hon'ble the Supreme Court in ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Limited, 1999(2) S.C.T. 660*** has held that the finding of the Enquiry Officer, which was contrary to the finding recorded by a competent Court of Law, cannot prevail to impose the punishment. Relevant portion of the judgment is as under:-

“31. There is yet another reason for discarding the whole of the case of the respondents. As pointed out earlier, the criminal case as also the departmental proceedings were based on identical set of facts, namely, 'the raid conducted at the appellant's residence and recovery of incriminating articles therefrom.' The findings recorded by the Inquiry Officer, a copy of which has been placed before us, indicate that the charges framed against the appellant were sought to be proved by Police Officers and Panch witnesses, who had raided the house of the appellant and had effected recovery. They were the only witnesses examined by the Inquiry Officer and the Inquiry Officer, relying upon their statements, came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case but the Court, on a consideration of the entire evidence, came to the conclusion that no search was conducted nor was any recovery made from the residence of the appellant. The

whole case of the prosecution was thrown out and the appellant was acquitted. In this situation, therefore, where the appellant is acquitted by a judicial pronouncement with the finding that the “raid and recovery” at the residence of the appellant were not proved, it would be unjust, unfair and rather oppressive to allow the findings recorded at the ex parte departmental proceedings, to stand.

32. Since the facts and the evidence in both the proceedings, namely, the departmental proceedings and the criminal case were the same without there being any iota of difference, the distinction, which is usually drawn as between the departmental proceedings and the criminal case on the basis of approach and burden of proof, would not be applicable to the instant case.”

Case of the petitioner is covered by the above said principle of law laid by Hon'ble the Supreme Court. Once the respondent-Corporation had led all the evidence, which it had, before the Competent Court of Law and did not succeed in persuading the Court for recovery of the amount on account of loss of 8114 gunny bags, the same could not have been done by relying upon the enquiry report of an Enquiry Officer which is subsequent to the dismissal of their suit on the same allegation against the petitioner. Further, these objections which have been taken by the petitioner while replying to the show cause notice before imposition of the punishment, have not at all been considered by the Competent Punishing Authority while imposing the punishment. Punishing Authority conveniently ignored the relevant facts, which were against the Corporation in order to impose the punishment of recovery upon the petitioner. From the order of punishment, it is clear that by the date impugned order of punishment was passed, not

only Civil Suit filed by the Corporation was dismissed but even the appeal filed had already been dismissed, which fact was conveniently ignored by the Punishing Authority while imposing the punishment upon the petitioner. Therefore, it can be safely said that the order of punishment has been passed without noticing the actual facts on record.

Not only this, learned counsel for the petitioner argues that the petitioner filed a detailed appeal before the Board bringing out to their notice the actual facts including the dismissal of the suit filed by the Corporation on the same allegations. Surprisingly, Board of Directors of the Corporation had passed an order, which is totally non-speaking. Though, it has been noticed by the Board of Directors that the petitioner brought to the notice of the Board of Directors during the personal hearing about the dismissal of the recovery suit filed by the Corporation on the same allegation, still order passed by the Board of Directors is that there was no force in the appeal made by the petitioner in respect of the recovery of an amount of ₹1,03,542.60 and that too without noticing the relevant facts. No reason has been given by the Board of Directors to arrive at the said decision, though, the ground raised by the petitioner has been noticed in the impugned order by which the appeal filed by the petitioner was rejected. A Division Bench of this Court on the question of law as to whether the appellate authority is to assign reasons while considering the appeal and passing the order held that in case the appeal is dismissed by the appellate authority by a cryptic order without dealing with the grounds raised by an employee against the punishment, is bad in law and is liable to be set-aside.

Division Bench while deciding CWP No. 16957 of 2004, decided on

18.05.2007, titled as **Raj Kumar Vs. State of Haryana and another**, held as under:-

“5. A perusal of the aforementioned rule shows that appellate authority is under an obligation to consider various aspects. It is required to be considered as to whether the facts on which the order is based were established and such facts afford sufficient ground for taking the action. It is further required to be considered whether the penalty is excessive, adequate or inadequate and then order by the appellate authority is required to be passed.

6. We may observe that the appellate authority is the only competent authority for re-appreciating evidence and to reach a conclusion different than the one recorded by the punishing authority. The Civil Court or the High Court in writ jurisdiction would not be competent to reverse the findings of fact except on the limited ground that the findings were bald, perverse and being without any evidence. (See : **Apparel Export Promotion Council v. A.K. Chopra, 1999 (1) SCT 642 : (1999) 1 SCC 759**). Moreover, it is well settled that reasons are necessary link between the evidence/facts and the conclusions reached. In that regard reliance may be placed on the judgment of Hon’ble the Supreme Court in the case of **Union of India v. M.L. Copper, AIR 1974 Supreme Court 87**.

7. It is further evident from perusal of Rule 9 of the Rules that the appellate authority is required to ‘consider’ the case of the appellant and then pass order. The use of word ‘consider’ in Rule 9 necessarily implies due application of mind. For the aforementioned proposition we draw support from a judgment of Hon’ble the Supreme Court in the case of **R.P. Bhatt v. Union of India, (1986) 2 SCC 651**. Dealing with a similar rule, it has been observed in para 4 as under:-

“ 4. The word ‘consider’ in Rule 27(2) implies ‘due application of mind’. It is clear upon the terms of Rule

27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.”

8. The wholesome principle stated in the aforementioned para would fully apply to the facts of the present case. It becomes evident that the appellate order is a cryptic order and does not fulfill the requirement of Rule 9 of the Rules. There is no reason given. The order has simply been conveyed to the petitioner that his appeal has been dismissed. Therefore, the order is liable to be set aside.”

In the present case, the order passed by the appellate authority is far from satisfaction to being a speaking order and, therefore, cannot sustain in the eyes of law at all. The appellate authority was deciding an appeal against the punishment and against the order of punishment, the petitioner had raised ground. Not even a single ground has been discussed in appeal while rejecting the same and, therefore, order dated 30.03.2015 (Annexure P-14) cannot be sustained in the eyes of law.

In view of the above, order of punishment dated 09.12.2013 (Annexure P-10) has been passed against the petitioner without noticing the actual facts and the order passed by the appellate authority is totally cryptic

and non-speaking, the same cannot be sustained in the eyes of law and are consequently set-aside.

As the order of punishment has been set-aside, the recovery which has been made from the pensionary benefits of the petitioner vide order dated 12.02.2015 (Annexure P-17), is liable to be refunded. The amount of ₹2,40,328/- which has been recovered from the pensionary benefits of the petitioner be refunded to him within a period of two months from the receipt of certified copy of this order.

The writ petition is allowed in above terms.

April 11, 2019
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No