

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

LPA-1619-2019(O&M)
Date of decision : 26 .09.2019

Union of India and others

... Appellants

Versus

Ex.No.99103003 CT/WC Jagtar Singh

... Respondent

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Ms.Sheenu Sura, Advocate
for the appellants.

RAJIV SHARMA, ACTING CHIEF JUSTICE

CM-3623-LPA-2019

In view of the reasons mentioned in the application supported by the affidavit, the application is allowed and delay of 67 days in filing the present appeal is condoned.

LPA-1619-2019

This appeal is instituted against the judgment dated 10.05.2019 rendered by learned Single Judge in CWP no.18197 of 2015.

2. The respondent-petitioner has filed the writ petition seeking quashing of order dated 02.09.2013. The respondent-petitioner was dismissed from service. The charges levelled against the respondent-petitioner as per charge sheet dated 23.08.2013 was that he remained absent for 41 days with effect from 01.07.2013 to 11.08.2013 without leave. The respondent-petitioner feeling aggrieved by the order dated 02.09.2013 filed

an appeal before the appellate authority. This was also dismissed.

3. The stand taken by the appellant before the learned Single Judge was that the respondent-petitioner has not been terminated for absence of 41 days but he was also habitual offender. The appellants have not brought to the notice of respondent-petitioner's earlier alleged misconduct. It is settled law that the previous misconduct can be taken into consideration after putting the delinquent to the notice.

4. Their Lordships of the Hon'ble Supreme Court in ***State of Mysore vs. K.Manche Gowda, AIR 1964 SC 506*** have held as under:-

“7. Under [Article 311\(2\)](#) of the Constitution, as interpreted by this Court, a Government servant must have a reasonable opportunity not only to prove that he is not guilty of the charges levelled against him, but also to establish that the punishment proposed to be imposed is either not called for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of the grounds on which it is proposed to take such action: see the decision of this Court in the [State of Assam v. Bimal Kumar Pandit, Civil Appeal No.882 of 1962 decided on 12.2.1963](#). If the grounds are not given in the notice, it would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment: he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the proposed punishment was mainly based upon the previous record of a Government servant and that was not disclosed in the notice, it would mean that the main reason for the proposed punishment was withheld from the knowledge of the Government

servant. It would be no answer to suggest that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments were imposed on him or that he knew of his past record. This contention misses the real point, namely, that what the Government servant is entitled to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on him. It is not possible for him to know what period of his past record or what acts or omissions of his in a particular period would be considered. If that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that subsequent to the punishments he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an Opportunity to give his explanation. We cannot accept the doctrine of "presumptive knowledge" or that of "purposeless enquiry", as their acceptance will be subversive of the principle of "reasonable opportunity". We, therefore,

hold that it is incumbent upon the authority to give the Government servant at the second stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.

8. *Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intended to be relied upon for imposing a punishment, should be made a specific charge in the first stage of the enquiry itself and, if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it, relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same.”*

5. We have gone through the dismissal order as well.
6. There is reference to his previous misconduct but the same has not been brought to his notice. The respondent-petitioner has remained absent only for 41 days. Every absence is not willful absence. The reason assigned by the respondent-petitioner for leave was family dispute.
7. There is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
ACTING CHIEF JUSTICE

(HARINDER SINGH SIDHU)
JUDGE

September 26, 2019.
Davinder Kumar

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