

CWP No.13448 of 2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.13448 of 2016

Date of Decision: 24th February, 2020

Anil Kumar

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Rajbir Singh, Advocate,
for the petitioner.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for quashing of the speaking order dated 29.06.2016 (Annexure P-12), vide which the earlier order of punishment dated 13.01.2011 (Annexure P-5) has been reviewed and the punishment of stoppage of two annual increments with future effect has been changed to the dismissal of the petitioner from service.

2. It is the contention of the learned counsel for the petitioner that the petitioner was working as Sewadar/Peon with the respondent department and remained absent from duty from 13.05.1993 to 21.09.2000 and thereafter, from 10.06.2002 to 07.08.2008 on the ground of his ill-health. Because of the absence of the petitioner without intimation, a charge-sheet was issued to him followed by the departmental enquiry. In the enquiry report dated 10.12.2010 (Annexure P-4), petitioner was found

guilty for remaining unauthorizedly absent from the office for the period referred to above. Petitioner, thereafter, has been punished by the Chief Engineer/Water Source, Irrigation Department, Punjab, vide order dated 13.01.2011 (Annexure P-5) with the stoppage of two annual increments with future effect under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. After the passing of the said order, pay of the petitioner has also been fixed by the Competent Authority.

3. While dealing with the period of absence, the matter was sent to the Department of Finance, Punjab, for approval to regularize the same, where some observations were made by the Department of Finance leading to the re-opening of the matter and fresh enquiry was marked. The Chief Engineer proceeded to appoint Shri M.S. Rattu, Additional District and Sessions Judge (Retd.), as Enquiry Officer vide order dated 15.09.2015 (Annexure P-9). The Enquiry Officer proceeded with the fresh enquiry and submitted his report dated 21.01.2016 (Annexure P-11). In the said enquiry report, it was held that the petitioner has already been punished by the Competent Authority keeping in view the earlier enquiry report dated 10.12.2010 (Annexure P-4) and therefore, nothing more is required to be done in the said enquiry. In pursuance to the said enquiry report dated 21.01.2016 (Annexure P-11), which has been submitted, petitioner has been found to have been dealt with as per rules. However, the matter was referred to the Secretary to Government of Punjab, Irrigation Department, who proceeded to pass an order dated 29.06.2016 (Annexure P-12), which cannot sustain and deserves to be set aside.

4. Learned counsel for the State, on the other hand, has asserted that the order of punishment, as has been imposed by the Secretary to Government of Punjab, Irrigation Department, is in accordance with law because the petitioner has absented himself in two spells for a long period of time. The earlier punishment which was imposed upon the petitioner with regard to stoppage of two annual increments with future effect was disproportionate to the misconduct, which has been attributed to him and proved, for which proper punishment was required to be imposed and the Secretary to Government of Punjab, Irrigation Department, has accordingly proceeded to pass the said order. He, thus, contends that the impugned order is in accordance with law, which does not call for any interference.

5. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the records of the case.

6. Perusal of the facts of the case, which are not in dispute, would show that a charge-sheet was issued to the petitioner earlier and in pursuance thereto, a regular departmental enquiry was initiated, which concluded on 10.12.2010 (Annexure P-4), where the Enquiry Officer submitted his report finding the petitioner guilty for remaining absent unauthorizedly for the periods from 13.05.1993 to 21.09.2000 and 10.06.2002 to 07.08.2008. The Competent Authority i.e. Chief Engineer proceeded to impose the punishment of stoppage of two annual increments with future effect vide order dated 13.01.2011 (Annexure P-5) under Rule 8 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. Even

the pay of the petitioner has been fixed accordingly and it is on some note/observation of the Department of Finance, Punjab, the Chief Engineer again initiated a fresh enquiry against the petitioner for the charges, for which he has already been held guilty and punished vide order dated 13.01.2011 (Annexure P-5). This act of the respondents, at the very outset, is unsustainable as that would amount to double jeopardy especially when the petitioner has been punished in the departmental enquiry held against him. No reasons whatsoever has been given by the Chief Engineer while passing the order dated 15.09.2015 (Annexure P-9) with regard to holding a fresh enquiry against the petitioner for the misconduct, which was attributed to him i.e. absence from duty for the same period, for which he had already faced the enquiry and the order of punishment. Even the Enquiry Officer, in his report dated 21.01.2016 (Annexure P-11), has not found that the earlier enquiry, which was held against the petitioner, to be illegal or in violation of the statutory rules, rather it has been reiterated and found to be in accordance with law and even the findings have been found to be correct. If that be so, the subsequent order dated 29.06.2016 (Annexure P-12) is in itself not sustainable for the reason that the Punishing Authority did not disagree with the findings which have been recorded by the Enquiry Officer and in any case, no dissenting note having been recorded nor has it been conveyed to the petitioner while giving him personal hearing. This amounts to violation of the statutory rules governing the procedure for imposing the punishment upon a delinquent employee. The impugned order dated 29.06.2016 (Annexure P-12), having been passed in violation of the

statutory rules, cannot sustain.

7. In view of the above, the present writ petition is allowed and the order dated 29.06.2016 (Annexure P-12) is hereby quashed. Petitioner, who is stated to be already in service, shall be entitled to all consequential benefits including pay and allowance, if any, due to him and the same shall be paid to him, if already not paid, within a period of two months from the date of receipt of certified copy of this order.

24th February, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No