

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.28725 of 2013 (O&M)

Date of Decision: September 20, 2021

Darshan Lal Bhandari

....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. K.B. Raheja, Advocate for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab for respondents.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution for issuance of a writ in the nature of certiorari to quash the impugned order dated 24.10.2013 (P-18) passed by respondent no.2-Commissioner Ferozepur Division, Ferozepur whereby statutory appeal of the petitioner was rejected and punishment of dismissal from service for the post of Senior Assistant imposed by respondent no.3-Deputy Commissioner, Moga vide order dated 10.11.2008 (P-15) was confirmed.

2. Paper book reveals that initially, on 06.12.1980, petitioner was appointed as a Peon in the office of Deputy Commissioner, Ferozepur; then promoted as Clerk; thereafter on 01.01.1991 as Senior Assistant and subsequently, upon creation of new district Moga, petitioner was transferred in the office of Deputy Commissioner, Moga.

3. The Government of Punjab, Personnel Department, vide Policy dated 08.05.2002 (P-6) *inter-alia* decided that any government employee who is having 08 years regular service, can apply for 5 years leave for self-employment subject to certain terms and conditions. In pursuance of the said policy, petitioner made a request dated 12.09.2005 for grant of 05 years leave, but taking into consideration the public interest, Deputy Commissioner, Moga vide order dated 24.02.2006 (P-7) declined the same; however, granted earned leave upto 28.02.2006. At the same time, petitioner was directed to resume duties w.e.f. 01.03.2006; with clear indication that in case, there is a failure, necessary action shall be taken against him as per rules.

In response to above order, petitioner made another representation dated 28.02.2006 (P-8) requesting that he has started business under self-employment scheme w.e.f. 04.09.2005, which was showing some progress and in case of joining duties, he will suffer losses in the business, thus requested for 05 years leave. The Deputy Commissioner while taking note of the fact that petitioner was directed to join duties w.e.f. 01.03.2006, but despite that he failed to do so, suspended him with immediate effect vide order dated 06.05.2006 (P-9). Also ordered that during suspension period, petitioner shall get suspension allowance and his head quarter will remain at the Office of Sub Divisional Magistrate, Bagha Purana, District Moga, where he was directed to be present on every Monday.

4. Thereafter, vide memo dated 19.05.2006, petitioner was charge-sheeted under Rule 8 of Punjab Civil Services (Punishment and

Appeal) Rules, 1970, for short “the Rules”, and the charges are extracted as under:-

“When you were on medical leave from 14.01.2005, then you made a request vide application dated 12.09.2005 for grant 05 years leave for self employment, but as per order No.19/AS issued by this office vide endorsement No.268-269/AS dated 24.02.2006, you were directed that earned leave was granted till 28.02.2006 and it was also made clear that as per instructions which were issued by Punjab Government for self-employment vide letter No.6/21/2001-6P.P.3/5108 dated 8.5.2002, no person shall be appointed in place of the employee to whom the leave is granted. Since there was a shortage of staff in this office, therefore, while rejecting your leave for 05 years, you were directed to be present in office on 01.03.2006. Despite that you did not appear. Then again vide letter No.439/AS dated 22.03.2006, reminder was given to you to come present in the office, but you did not appear. As a result, you deliberately remained absent and made yourself liable for the punishment.”

After issuance of the above charge-sheet, Sub Divisional Magistrate, Bagha Purana, was appointed as inquiry officer, who submitted his report dated 27.08.2007 to the effect that charges levelled against the petitioner stood duly proved.

Consequently, in terms of rule 5, a show-cause notice dated 03.01.2008 along with copy of inquiry report was issued to the petitioner

under registered post as well as through R.K.E.O Branch, Sadar Office, Tehsildar, Moga; but notice could not be served upon him despite best efforts. Ultimately, vide order dated 13.08.2008 passed by Deputy Commissioner, notice was got published through District Public Relation Officer, Moga in two newspapers on 16.08.2008 i.e. The Tribune; and Daily Ajit. It was clarified through public notice that petitioner should come present for hearing within 21 days of publication and in case of failure, necessary action shall be taken against him as per rules. Despite above factual position, petitioner did not turn up; rather he sent another application dated 01.09.2008 repeating his request for 5 years leave on account of self-employment. Left with no alternative, the Deputy Commissioner, after taking into consideration the inquiry report as well as the fact that despite repeated opportunities petitioner intentionally did not come present, dismissed him from service vide order dated 10.11.2008 and copy of same was sent to the petitioner under registered cover.

5. Aggrieved against the dismissal order, petitioner straightway filed CWP No. 2587 of 2010, which was disposed of vide order dated 15.02.2010 relegating him to avail the alternative remedy of statutory appeal and appellate authority was directed to decide the same in accordance with law by passing speaking order within 3 months.

6. In pursuance of the above order, petitioner filed an appeal, but it was rejected by Commissioner- respondent No.2, vide order dated 22.06.2010. Aggrieved against the order of appellate authority, petitioner filed CWP No. 16677 of 2010, which came up for hearing on 30.09.2010, but challenge was not accepted; however contention regarding

subsistence allowance was accepted with the direction that respondents shall consider his claim under Rule 7.2 of the Punjab Civil Service Rules, Volume I Part I, Chapter VII.

7. Dissatisfied with the above order, petitioner preferred LPA No. 761 of 2011, which was allowed partly vide order dated 30.04.2013 and the order of learned Single Judge was modified. As a result thereof, the order dated 22.06.2010 passed by appellate authority was set aside and matter was remanded back to decide the appeal of petitioner afresh in accordance with law and rule 19(2) within a period of 06 (six) months. Petitioner was also granted liberty to raise the issue of non-payment of subsistence allowance before the appellate authority

8. Again the appellate authority while passing the impugned order, dismissed the appeal of petitioner, hence present writ petition.

9. Parties were heard at length through video-conference and made their respective submissions.

10. **Contentions raised on behalf of the petitioner:-**

- i) As per Rule 8.15 of Punjab Civil Service Rules, Volume I, Part I, the nature of leave due and applied for by a government employee cannot be altered at the discretion of the sanctioning authority, except that it could be either refused or revoked;
- ii) Respondent No.2 passed the impugned order in cyclostyle manner without taking into consideration the order dated 30.04.2013 passed in LPA No. 761 of 2011, wherein it was specifically directed to consider the appeal of petitioner in

terms of rule 19 (2) along with quantum of punishment awarded to him ;

- iii) Non-payment of subsistence allowance to the petitioner during pendency of disciplinary proceedings amounts to denial of proper opportunity of hearing, thus, it has resulted into miscarriage of justice. Reference in this regard is made to the judgments of Hon'ble Supreme Court in **Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd.; Fakirbhai Fulabhai Solanki Vs. Presiding Officer & another**; AIR 1986 SC 1168; as well as **Jagdamba Prasad Shukla Vs. State of UP and ors.** (2000) 7 SCC 90;
- iv) Since the petitioner had completed more than 08 years of service, therefore his case was fully covered under the policy dated 08.05.2002 for grant of 05 years leave on account of self-employment.
- v) Neither any charge-sheet; nor show-cause notice was ever served upon the petitioner, therefore, he was not afforded proper opportunity of hearing to defend his case during the disciplinary proceedings;
- vi) The impugned order passed by respondent No.2-Commissioner while dismissing the appeal is totally cryptic, arbitrary and non-application of mind.
- vii) That order of dismissal from service passed by respondent No.3 is extremely harsh and severe, in view of the fact that petitioner was having unblemished service record of 28 years,

but this aspect of the matter has not been considered by the appellate authority.

On the other hand, learned State counsel opposed the above contentions while submitting that: ---

- (a) the orders passed by both the authorities are in consonance with law and have rightly been passed after following due procedure prescribed under the rules.
- (b) Further submitted that petitioner intentionally absented from duty despite the fact that his application for 05 years leave for self-employment was rejected by Deputy Commissioner due to administrative reasons, but despite that he did not bother to join the duties and thus, committed a gross misconduct.
- (c) Again contended that when petitioner did not come present, he was served with a charge-sheet dated 19.05.2006, followed by regular departmental inquiry dated 03.01.2008 and which ultimately culminated into his dismissal on 10.11.2008, but petitioner never bothered to obey the orders of his superiors.
- (d) Also contended that despite repeated reminders, petitioner did not care to join the disciplinary proceedings and ultimately publication was made in two newspapers i.e. The Tribune; and Daily Ajit, on 16.08.2008, but he deliberately avoided the departmental proceedings.

- (e) Further submitted that petitioner was declared as a proclaimed offender in a criminal case arising out of FIR No. 156 dated 24.08.2007 under Section 420 IPC registered at Police Station City Ferozepur, by Chief Judicial Magistrate, Ferozepur vide order dated 25.01.2011 thus, he has no respect for law.
- (f) Again submitted that entire amount of subsistence allowance as claimed by the petitioner was duly paid to him at the relevant point of time and nothing remained due , thus, prayed for dismissal of writ petition.

11. Heard learned counsel for the parties and perused the record.

12. The points for consideration in the present case are as under:—

- (i) Whether in view of the provisions of rule 19 (2), the impugned order dated 24.10.2013 passed by the appellate authority is legally sustainable?
- (ii) If yes, what appropriate orders should be passed in view of the facts and circumstances of the present case?

13. On 30.04.2013 ,the Division Bench of this Court while deciding LPA No. 761 of 2011, *inter-alia* observed as under:-

“5. It is thus obvious that the appellate authority is required to pass a well reasoned order to meet with the requirements of sub-rule (2) of Rule 19, reproduced above. In the instant case, we find from the appellate order that the complete factual history though has been narrated alongwith comments

received from the Deputy Commissioner, Moga on the grounds of appeal of the appellant, nonetheless the appellate authority dismissed the appeal observing that the appellant did not turn up despite notice sent to him vide registered post and that “on the basis of record, the appeal is dismissed.”

6. *Suffice it would be to observe that the appellate authority has not considered whether the findings of the punishing authority are warranted by evidence on record and whether the procedure prescribed under the statutory rules has been followed or not. Similarly the appellate authority was required to look into the quantum of punishment awarded to the employee. However, none of these factors have been dealt with while passing the impugned order. In our considered opinion, the order passed by the appellate authority does not comply with the requirements of Rule 19(2) of the Punjab Civil Services (Punishment & Appeal) Rules, 1970, and therefore, is totally cryptic, non-speaking hence unsustainable.*
7. *For the reasons aforesaid, the appeal is allowed in part and the order passed by the learned Single Judge is modified to the extent of setting aside the order dated 22.6.2010/ 1.7.2010 (Annexure P-18) passed by the Commissioner, Ferozepur Division, Ferozepur, exercising his powers as the appellate authority. Consequently, the appellant authority is directed to decide the departmental appeal of the appellant afresh and in accordance with law and Rule 19(2) of the Punjab Civil Services (Punishment & Appeals) Rules, 1970.”*

14. It transpires that on September 06, 2021, this Court passed the following order:-

“During the course of hearing, learned State counsel has pointed out that regular departmental enquiry was conducted in the matter on 27.08.2007, but no such report is available with the paper-book.

In view of the above, enquiry report, if any, along with other relevant material be placed on record at the earliest.

Posted on 10.09.2021.”

Again on 10.09.2021, time was granted to learned State counsel for compliance of the above order and matter was posted for 15.09.2021, but needful was not done; however, he produced the original records of case at the time of arguments .

15. This Court has gone through the original records including inquiry report 27.08.2007 and perusal of the same reveal that despite numerous efforts, petitioner never came present to join the departmental proceedings pending against him. It is evident that repeated notices were sent to him under registered cover as well as through the office of Tehsildar, Moga, but he did not turn up. Even the show-cause notice could not be served upon the petitioner despite sincere efforts and ultimately, publication was made in two newspapers i.e. ‘The Tribune’ & ‘Daily Ajit’, on 16.08.2008. The factum of publication is duly acknowledged by petitioner in his subsequent request dated 01.09.2008 for grant of 05 years leave.

No doubt, as per original records, an FIR No. 156 dated 24.08.2007 under Section 420 IPC at Police Station City Ferozepur was

registered against the petitioner, and learned Chief Judicial Magistrate declared him proclaimed offender, vide order dated 25.01.2011; however, this aspect of the matter was never raised by the Public Prosecutor before the appellate authority, and moreover, both sides are not aware about the fate of criminal case, thus the same is not of much relevance.

16. Since rule 19(2) of the rules is having the bearing for adjudication of matter in controversy, therefore, relevant part of the same is extracted as under:-

“Consideration of appeal:

- (1)
- (2) *In the case of an appeal against an order imposing any of the penalties specified in Rule 5 or enhancing any penalty imposed under the said Rules, the appellate authority shall consider-*
- (a) *whether the procedure laid down in these Rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice.*
- (b) *whether the findings of the punishing authority are warranted by the evidence on the record; and*
- (c) *whether the penalty or the enhanced penalty imposed is adequate , inadequate or severe and pass orders—*
- (i) *confirming, enhancing, reducing or setting aside the penalty; or*
- (ii) *remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:*
- Provided that.....”*

Perusal of sub-rule (2) makes it apparently clear that in case of an appeal against an order imposing any of the penalties specified under rule 5, it is obligatory upon the appellate authority to consider as to *whether procedure laid down under the rules have been complied with, and if not, whether such non-compliance has resulted in the violation of any provision of the Constitution of India or in the failure of justice.* It further envisages as to *whether findings of the punishing authority are warranted by the evidence on the record and whether the penalty is severe in nature and as such* the appellate authority was required to examine as to whether the punishment imposed would be commensurate with the alleged misconduct against the delinquent. Thus, the appellate authority was under an obligation to record its own independent conclusion with reference to above aspect of the matter in terms of sub-rule (2) of rule 19.

17. A careful examination of the impugned order dated 24.10.2013 reveals that paragraph Nos.1 to 5 thereof, talk about passing of the dismissal order against the petitioner as well as rejection of his appeal on earlier occasion vide order dated 22.06.2010 and dismissal of CWP No.16677/2010. It further narrates about LPA No. 761 of 2011 to decide the appeal of petitioner afresh in accordance with law and to consider the issue of subsistence allowance as well. Paras 6 & 7 talk about the report sent by Deputy Commissioner, Moga, to the effect that no amount of subsistence allowance was payable to the petitioner. These paragraphs also narrate about disposal of CWP No. 8045 of 2012 as infructuous in view of the fact that an amount of Rs.1,44,120/- as difference of subsistence allowance was already paid to the petitioner and granting of

liberty for revival of the above writ petition in case an occasion so arises.

Para 8 discloses about the facts that petitioner proceeded on medical leave w.e.f. 14.01.2005 as well as about his application dated 12.09.2005 for seeking 5 years leave for self-employment and rejection of the same by Deputy Commissioner along with suspension order; issuance of charge-sheet, departmental inquiry and dismissal order dated 10.11.2008. This para also talks about disposal of CWP No.2587 of 2010, comments received from Deputy Commission regarding willful absence from duty and violation of the orders of superiors while not joining the inquiry proceedings. Also talks about the administrative reasons/ shortage of staff for non-grant of leave for self-employment and dismissal of his appeal on 22.06.2010. In para 9, the contentions raised on behalf of the petitioner are noticed and in para 10, the submissions of public prosecutor are mentioned.

The appellate authority has recorded its conclusion in Para 11 of the impugned order and which reads as under:-

“11. After hearing both the parties and going through entire record, I have come to the conclusion that appellant remained continuous absence from duty without getting sanctioned the leave. Appellant had no right to avail leave. The Deputy Commissioner, Moga had refused him said leave due to administrative reasons. The Deputy Commissioner, Moga has conducted stipulated proceeding against the appellant on having proved the allegations levelled against him and dismissed him from service. The previous Commissioner had afforded an opportunity of personal hearing to appellant on 22.06.2010, but he did not came present on that day before appellate authority, due to which, the appeal was

decided on merit and he had dismissed the appeal filed by the appellant. As per fresh report of Deputy Commissioner, Moga, payment of entire dues of appellant stands made and nothing is due now. Since the appellant is found intentionally absent from duty and Inquiry Officer has proved allegations against him, hence he has no right to continue in service. Hence his appeal, being devoid of merits, is hereby dismissed and order passed by Deputy Commissioner, Moga is upheld.”

Perusal of the above extracted portion reveals that petitioner remained continuous absent from duty without getting the leave sanctioned, and, according to the appellate authority he had no right to avail the leave. Also observed that Deputy Commissioner, Moga refused his request to grant leave due to administrative reasons and departmental proceedings were conducted against him; wherein charges were proved against petitioner on the basis of an inquiry and ultimately dismissed him from service. Further concluded that previous Commissioner had offered an opportunity of personal hearing to the petitioner on 22.06.2010, but he did not come present and as a result thereof, his appeal was dismissed on merits. Further observed that as per fresh report of Deputy Commissioner, Moga, payment of entire dues of petitioner were made and nothing remained due on the date of passing the order. It is also concluded that petitioner was found intentionally absent from duty, hence he had no right to continue in service. Ultimately, the appeal was found devoid of any merits and the same was dismissed while upholding the dismissal order passed by Deputy Commissioner-respondent no.3.

18. No doubt, the appellate authority has dismissed the appeal while drawing the above conclusion; but it is nowhere discernable that the same is in consonance with the provisions of rule 19 (2) of the Rules. There is no opinion expressed by the appellate authority that procedure laid down under the rules was followed by the disciplinary authority while imposing the punishment of dismissal from service against the petitioner; It is quite elementary that departmental proceedings are quasi-judicial in nature, which obligate the appellate authority to consider, as to whether findings of the punishing authority are warranted by evidence on record and procedure prescribed under the statutory rules has been adhered to upto the imposition of punishment. Similarly the appellate authority was required to look into the quantum of punishment awarded to the petitioner in view of the facts and circumstances of the case. In the present case the appellate authority failed to consider as to whether the findings of the punishing authority while passing the dismissal order were warranted on the basis of evidence on record. Concededly, the petitioner had rendered about 28 years of service, but this aspect of the matter has completely been ignored by the appellate authority and failed to consider as to whether punishment of dismissal from service imposed upon petitioner is commensurate with the charges levelled against him or the same is severe warranting reconsideration by the punishing authority. . However, none of these imperatives have been considered while passing the impugned order, thus the same is indefensible in law.

19. It is necessary to observe here that this Court is not suggesting anything on merits of the charges, except that appellate authority ought to

have record its conclusion in consonance with the requirement of rule 19 (2) of the rules, so that there could be *‘right end of the lis through right means’*.

20. Since the order impugned is affecting civil rights of the petitioner, therefore, the basic requirement of law as contemplated under sub-rule (2) ought to have been followed in letter and spirit, but the same has been found altogether missing at the instance of the appellate authority. As a result thereof the interest of justice got tripped being in violation of the equality clause contained under Article 14 of the Constitution and ultimately negated the rule of law.

21. In the present case, repeatedly wrong order has been passed by the appellate authority while ignoring the mandatory procedure prescribed under rule 19(2) and that has resulted into the unwarranted increase of docket of this court. Had there been compliance of the rule of law, this round of litigation could have been easily avoided?

Regarding the importance of procedural imperatives in such like matters , it is apt to quote observations of Justice Frankfurter of the U.S. Supreme Court (**Vitarelli Vs. Seaton, Secretary of the Interior, ET AL.** 359 U.S.535, 1959), which read as under:-

“An executive agency must be rigorously held to the standards by which it professes its action to be judged. See Securities & Exchange Comm’n v. Chenery Corp., 318 U.S. 80, 87-88. Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed.

See Service v. Dulles, 354 U.S. 363. This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with that sword”.

The above legal principle has been followed by Hon’ble Supreme Court in various judicial pronouncements and reference in this regard can be made to **Sukhdev Singh vs. Bhagatram Sardar Singh Raghuvanshi**, (1975) 1 SCC 421, **Amarjit Singh Ahluwalia (Dr.) vs. State of Punjab**, (1975) 3 SCC 503, and **Ramana Dayaram Shetty vs. International Airport Authority of India**, (1979) 3 SCC 489.

22. In view of above, the irresistible conclusion would be that the appellate authority miserably failed to follow the mandatory provisions of sub-rule (2), rule 19(ibid) and disregarded the order of the Division Bench of this court dated 30.04.2013 despite clear and categorical directions contained therein.

23. As a sequel to the above discussion, this Court is of the firm opinion that the impugned order passed by the appellate authority is not only in contravention to the provisions of rule 19 (2) of the Rules, but also amounts to negation of the rule of law.

24. As a result thereof, there is no option except to allow the writ petition and set aside the impugned order dated 24.10.2013.

25. Consequently, the writ petition is allowed. Impugned order dated 24.10.2013 (P-18) is hereby set aside and the appellate authority is again directed to consider and decide the appeal filed by the petitioner

strictly in accordance with the letter and spirit of the order dated 30.04.2013 passed by Division Bench in LPA No. 761 of 2011 within a period of 03 months from today, positively.

26. Since the appellate authority while passing the impugned order did not adhere to the order of Division Bench of this Court, thus, it shows the incorrigible approach of the officer concerned, which deserves to be discouraged in the interest of justice.

27. Resultantly, as a deterrence, costs of Rs.50,000 (Rupees Fifty Thousand Only) is imposed upon the respondents to be deposited with The Director, PGIMER, Chandigarh, for utilization towards Poor Patients Welfare Fund, within a period of four weeks from today. State of Punjab shall be at liberty to recover the same from the erring officer who passed the impugned order.

28. Original record be returned back to the concerned official.

29. Pending application(s), if any, stand(s) disposed off.

30. The observations made above be not construed as an expression of opinion on merits of the appeal to be decided by the appellate authority.

31. Copy of this order be sent to Director, PGIMER, Chandigarh.

September 20, 2021
sanjay

(MAHABIR SINGH SINDHU)
JUDGE

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