

Ram Kumar deceased through his LRs

...Petitioner

versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. S.P.Laler, Advocate,
for the petitioner.

Mr. R.D. Sharma, DAG, Haryana.

ARUN MONGA, J. (ORAL)

Petition herein, *inter alia*, is for issuance of a writ in the nature of mandamus directing the respondents to withdraw the punishment of warning (Annexure P-7) and treat his period of suspension as duty period for all intents and purposes and to grant him all consequential benefits along with interest.

2. Succinct facts first. Petitioner joined service on 17.03.1990 with the respondent Transport Department. On 12.10.1992, charge-sheet was issued to him for allegedly defrauding a sum of Rs.30,000/-. He submitted his reply to the charge-sheet on 03.11.1992 (Annexure P-1). Thereafter, he was issued a show-cause-notice dated 22.02.1994 (Annexure P-2), to which he duly submitted a reply. Vide order dated 09.05.1994 (Annexure P-3) punishment of stoppage of one increment with cumulative effect and restriction of subsistence allowance was imposed on him. The petitioner filed an appeal before the Learned Commissioner and Secretary to Government of Haryana, Transport Department, but the appeal was dismissed vide order dated 02.01.1997 (Annexure P-5). Thereafter, he filed a civil writ petition. The writ petition was allowed and order of appellate authority was set aside and case was remanded back for fresh decision. Thereafter, in compliance of the order of this Court, the appellate authority heard the petitioner

and punishment awarded to the petitioner was withdrawn, but the petitioner was “warned to be careful in future” and his period of suspension was ordered to be treated as leave of kind due.

3. Learned counsel for the petitioner submits that appellate authority had withdrawn the earlier punishment imposed on the petitioner. He was only warned to be careful in future, which is not a punishment within the meaning of the relevant Rules, hence his suspension was not justified and therefore, his period of suspension is to be treated as duty period. Hence, the instant petition.

4. Learned State counsel has canvassed arguments on similar lines as per the defense taken in written statement.

5. I have heard learned counsel for the parties and gone through the case file.

6. Having heard rival contentions, I am not inclined to accept the argument of learned counsel for the petitioner that mere issuance of a warning to the petitioner without there being corresponding entry in the personal file does not amount to punishment and, therefore, he was entitled for payment of salary for the entire suspension period and not merely just subsistence allowance. Reference in this context may first be had to the relevant punishment rules wherein petitioner was given show-cause-notice dated 22.02.1994 (Annexure P-2) by the punishing authority.

“Rule 4 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 is as under:-

‘Minor Penalties’

- i) Warning with a copy in the personal file (Character roll)*
- ii) Censure;*
- iii) Withholding of promotion;*
- iv) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders, to the Central Government or a State Government or to a company and association or a body of individuals whether incorporated or not, which is wholly or substantially owned or controlled by the Government or to a local authority or University set-up by an Act of Parliament or of the legislature of a State; and*
- v) with holding of increment of pay.*

(2) Major Penalties.

(vi) reduction to a lower stage in the time scale of pay for a specified period, with further directions as to whether or not the Government employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

vii) Reduction to a lower scale of pay, grade post or service which shall ordinarily be a bar to the promotion of the Government employee to the time scale of pay, grade post, or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government employee was reduced and his seniority and pay on such restoration to that grade, post or service;

viii) Compulsory retirement;

ix) removal from service which shall not be a dis-qualification for future employment under the government;

x) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;”

7. Perusal of the above would reveal that while issuance of warning is a minor penalty on the other hand withholding of one increment with cumulative effect falls under the Major penalty. Initially, the petitioner was issued show cause notice dated 22.02.1994 (Annexure P-2) by the Punishing Authority as to why in view of his having been indicted by the Inquiry Officer for the report, he be not imposed major penalty withholding of one increment with cumulative effect and after restricting the payment qua the suspension period only up to subsistence allowance and not the entire salary. Petitioner gave his response to the same and which was not found satisfactory resulting in major punishment to him. However, he preferred an appeal qua the same. Appellate authority vide order dated 09.05.1994 confirmed the punishment awarded by the Punishing Authority in the following words:-

“I had studied the reply of the employee.

The employee wants to delay reply to the show cause notice knowingly. If he was in need of the copies of the witnesses he should demanded during enquiry from the Enquiry Officer. It is not correct to supply him copies of witnesses at that time. During enquiry the employee was given full opportunity by the Enquiry Officer to defend his case.

So, I confirm the punishment given in the notice and orders for reinstatement of the employee.”

8. Subsequently, petitioner impugning the above appellate order confirming the punishment awarded to him approached this Court by filing CWP No.14666 of 1997 wherein the matter was remanded to the appellate authority for fresh consideration and Financial Commissioner and Administrative Secretary of the Transport Department, Government of Haryana took a lenient view as is borne out from the operative part of the order dated 26.06.1998, which is reproduced hereinbelow:-

“5. Aggrieved by the above order Sh. Ram Kumar approached the Hon’ble High Court filing a CWP No.14666/97. Accordingly, the order passed by the Hon’ble Court that appellate authority shall decide the case afresh in accordance with the rules. The Court directed that the appellate authority shall grant an opportunity of personal hearing to the petitioner.

6. Accordingly, Sh. Ram Kumar was heard in person by the undersigned. During hearing he pleaded that he is not at fault and only done whatever the Accounts Officer told him. In the defence he gave in writing his statement. Keeping in view this statement and A.C.R. reports, I order that the punishment awarded to him be withdrawn and he may be warned to be careful in future. The period of his suspension be treated as leave of the kind due, if the leave is not due, he may be allowed extra-ordinary leave.”

9. In the aforesaid background, I am of the view that what remains uncontroverted is that delinquency of the petitioner, at no stage, was set aside either by the punishing authority or in the first round by the appellate authority or even by this Court in the writ proceedings and thereafter on fresh consideration of the matter by the Administrative Secretary of the Department. It may also be noted that certain other employees, who were also held delinquent were meted out with much harsher punishment i.e. dismissal of their services and they later on challenged the same in this Court, however, due to the intervention of the Apex Court, their dismissal order was modified into compulsory retirement.

10. In the overall premise, I am of the view that petitioner has already been given the benefit of a very lenient treatment by the Administrative Secretary of the Department inasmuch as he modified his major punishment into a minor one

with a simple warning to be careful in future and, therefore, no further intervention is warranted by this Court.

11. To argue that merely because the warning has been issued without there being corresponding entry in the service record does not amount to minor punishment is just hair-splitting by playing with words and goes against the intent of what is envisaged in Rule 4 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 wherein it is clearly stated that warning with corresponding entry in the service book is a minor punishment. To suggest that since there is no entry in the record, therefore, warning is not a punishment, is taking double advantage of the leniency of the punishing authority. If the argument of the learned counsel for the petitioner is to be accepted, the same would amount to giving double benefit of the leniency already shown by the Administrative Secretary.

12. Suffice to say, no grounds are made out to interfere. Dismissed.

(ARUN MONGA)
JUDGE

July 13, 2022

Vandana

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