

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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**CWP-4777-2020 (O&M)
Date of Decision: 10.11.2022**

INDERJEET SINGH

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Surinder Gandhi, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. S.K. Bhardwaj, Advocate
for respondent No.4.

VINOD S. BHARDWAJ, J. (ORAL)

CM-17648-CWP-2022

This is an application for placing on record the replication on behalf of the petitioner.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions.

The replication is ordered to be taken on record. Registry is directed to tag the same at appropriate place of the paper book and page mark the same.

MAIN CASE

The present petition had been filed for seeking issuance of directions to the respondents to take disciplinary action against respondent No.4 in terms of the legal notice dated 21.01.2020.

Briefly summarized, the facts of the present case are that the petitioner is an employee of the Haryana Government and posted as Addl. Senior Medical Officer in B.K. Hospital, Faridabad. The respondent No.4 was posted as Civil Surgeon at Gurugram, from where he was transferred to Charkhi Dadri on 10.07.2019 and he joined on 19.07.2019. While being posted at Gurugram, a Government accommodation was allotted to the respondent No.4. Thereafter, on 02.09.2019, the respondent No.4 was transferred from Charkhi Dadri to Sonapat. He further contends that after transfer of respondent No.4 from Gurugram to Charkhi Dadari, he did not vacate the Government accommodation allotted to him at Charkhi Dadri for a period from 19.07.2019 to 02.09.2019 and he vacated the said Government accommodation only on 30.09.2019. While the respondent No.4 was in possession of Government accommodation at Gurugram, he falsely claimed House Rent Allowance at Charkhi Dadri for the period from 19.07.2019 to 02.09.2019, however, he was not entitled to claim the same as per Civil Service Rules. Reference in this regard was made to Rules 17(i) and (ii) of the Haryana Civil Service Rules, 2016 for making good his assertions.

Reply to the writ petition was filed on behalf of the respondents No.1 to 3. The relevant extract of the same is reproduced hereinafter below:

6. *That the petitioner has approached this Hon'ble Court for this act and conduct of the respondent No.4 praying therein to direct the competent authority to take disciplinary action against the respondent No.4. In this regard, it is further respectfully submitted that respondent No.4 in response to the writ petition filed by the petitioner vide letter PA/CS-SNP-2020/2671 dated 28.07.2020 (Annexure R-1) has intimated that while he was posted as Civil Surgeon in Charkhidadri from 19.07.2019 to 02.09.2019, by mistake of clerk the bill of HRA was automatically made alongwith his salary. However he never applied for HRA*

and when he came to know that he has been given HRA in salary, immediately deposited Rs.22,652/- in treasury and informed Civil Surgeon Charkhi Dadri vide letter No.PA/CS-SNP-19/1465 dated 30.10.2019.

7. *That the office of answering respondent after receiving the comments from the respondent No.4 submitted the matter to the Government vide Single File System CFMS No.21504 dated 15.10.2020 (Annexure R-2) to take a decision being competent authority with a request to file the matter as the alleged amount has been deposited by the officer in the month of October, 2019.*

8. *That the competent authority in pursuance of letter dated 15.10.2020 directed the office of answering respondent to submit the clear comments in the matter after taking legal opinion.*

9. *That the office of answering respondent vide letter CFMS No.6305 dated 31.12.2020 (Annexure R-3) in compliance of direction issued by the competent authority submitted the matter again to the Government.*

10. *That the Government being competent authority after taking into consideration the actual facts/comments supplied by office of answering respondent and intimation submitted by the respondent No.4 decided to file the complaint by issuing warning to the respondent No.4 for non repetition of incident in future vide Memo No.7/60/2020-2HB-I dated 09.08.2021 (Annexure R-4).*

11. XXXX XXXX XXXX

12. *That it is evident from the record, the respondent No.4 after getting the amount deposited in Government Treasury has intimated the Civil Surgeon, Charkhi Dadri vide letter dated 30.10.2019 taking plea therein that the amount of Rs.22652/- was disbursed inadvertently in favour of the Officer on account of HRA. He further intimated that due to clerical/technical mistake of the billing Clerk, the amount has inadvertently been disbursed in his favour and immediately coming into notice this fact, he has got the amount deposited back in the Government Treasury immediately vide challan No.0059200774 dated 23.10.2019 i.e. within a month of joining at other place upon transfer from*

Charkhi Dadri which clearly goes to show the bonafide intention of the respondent No.4.

13. That the respondent No.4 has deposited the amount back into Government Treasury vide challan dated 23.10.2019 whereas the petitioner has filed CWP on 09.02.2020. Meaning thereby, the respondent No.4 has deposited back the amount much prior to filing of present CWP which further leads to the fact that at the time of filing of CWP, there was no cause of action and the cause of action had been lapsed in the year 2019 due to challan dated 23.10.2019 vide which the respondent No.4 has got the amount wrongly disbursed deposited in the Government Treasury.

Separate reply on behalf of respondent No.4 has also been filed and the relevant extract of the same reads thus:

“3. That during the posting at Charkhi Dadri, the answering respondent remains to be the DDO also and the pay bills were being prepared by the clerical staff and inadvertently the house rent allowance of the answering respondent was not deducted while preparing the pay bills and just after coming to know about the fact that the house rent allowance is being wrongly drawn to the answering respondent No.4, the answering respondent had deposited the same in the Government Treasury by expressing his inadvertence. The answering respondent had deposited a sum of 22,652/- vide Treasury Challan GRN No.0059200774 dated 23/10/2019. The copy of challan deposited by the answering respondent No. 4 is attached herewith as ANNEXURES R-4/2.

4. That the answering respondent is serving the respondent Department since January 1989 and during his service carrier, had never committed any such conduct as the present one is the result of inadvertence or clerical INDIA mistake and only due to the reasons that the answering respondent is to manage the official duty at Charkhi Dadri and family at Gurugram and just after coming to know about the mistake, the answering respondent had deposited the amount, which is alleged to be drawn by the

answering respondent as per the legal notice, annexed with the present writ petition.

5. XXXX XXXX XXXX

6. *That the present writ petition is filed by the petitioner by concealing the material fact that prior to serving of the legal notice i.e. dated 21/01/2020 the answering respondent had already deposited the said amount way back in the year 2019 i.e. on 23/10/2019 and as such the present writ petition be dismissed with exemplary costs upon the petitioner for filing such a vague and frivolous litigation against the answering respondent No. 4 as well as State of Haryana & for overburdening the Hon'ble High Court.*

7. *That since the answering respondent is arrayed as private respondent by name, without alleging any malafide as well as without claiming any relief against the private respondent No.4 and dragged the answering respondent in the present litigation and on the other hand over burdened this Hon'ble court by filing such a frivolous and vague petition knowingly that the amount drawn due to inadvertence or clerical mistake, had already been deposited in October 2019 with the government Treasury. In such circumstances the petitioner is liable to be imposed exemplary costs to the tune of Rs.50,000 on account of litigation expenses incurred by the answering respondent upon the present writ petition.*

It is evident from the perusal of the same that the amount in question i.e. the amount of HRA claimed by respondent No.4 for the period from 09.07.2019 to 02.09.2019 is stated to have been paid due to inadvertence by the clerical staff and the excess amount claimed on account of HRA has already been deposited by respondent No.4 with the Government Treasury even prior to filing of the present writ petition. The respondent-State has already filed the complaint as no further action is deemed necessary.

There is thus no reason or occasion for this Court to interfere in a conscious decision taken by the respondent-State or to substitute its opinion or for directing any other punishment to be imposed upon respondent No.4 especially when the petitioner has also not been able to substantiate his locus standi for institution of the instant petition. Besides, there is nothing on record to suggest that the action was malicious and caused any pecuniary loss to the State. The law does not intend to punish inadvertent errors. Malicious intent is the pre-requisite for initiating proceedings except in matters of strict liability. When such intent is absent and prompt remedial steps had been taken, it would not be prudent or desirable for continued disciplinary proceedings.

Taking into consideration the totality of the facts and circumstances of the present case, no further direction is required to be issued at this stage. The instant petition is accordingly disposed of at this stage.

10.11.2022
rajender

(VINOD S. BHARDWAJ)
JUDGE

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