

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(295)

CWP-9757-2022

Date of Decision : September 07, 2022

Kuldeep Singh Saini

.. Petitioner

Versus

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sumit Aggarwal, Advocate, for
Mr. Ashwani Talwar, Advocate, for the petitioner.

Mr. Raman K. Sharma, Addl. Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

In the present petition, though the order dated 04.10.2018 (Annexure P-16) passed by the punishing authority whereby the petitioner was imposed with the punishment of being down graded from Rs.1,41,800/- to Rs.1,29,800/-, is also under challenge but learned counsel for the petitioner submits that order passed by the appellate authority in respect of the appeal preferred against the order dated 04.10.2018 (Annexure P-16) decided on 22.04.2019 (Annexure P-18) is liable to be set aside on the ground that the punishing authority also participated in the meeting of the appellate authority and was a part of the appellate authority so as to arrive at a decision on the appeal preferred by the petitioner, which culminated in the order dated 22.04.2019 so as to reject the appeal filed by the petitioner.

Learned counsel for the petitioner argues that in the present case, once the same Officer, who passed the order of punishment also participated in the proceedings in respect of the decision on the appeal filed by the petitioner against the order of punishment, the decision so taken by the appellate authority is vitiated as the Officer, who passed the order of punishment, cannot be made to sit and decide the appeal of the petitioner, where the decision rendered by the said Officer is in question.

After notice of motion, the respondents have appeared.

Learned counsel for the respondents very fairly submits that though no reply has been filed but it is a matter of fact that the officer, who passed an order of punishment on 04.10.2018 was part of the appellate authority which took decision on the appeal preferred by the petitioner against the said order, which culminated in the order dated 22.04.2019.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

The only question which arise in the present petition is whether, the decision which has been taken by the appellate authority in case of the petitioner in respect of the impugned order of punishment dated 04.10.2018 is valid or is vitiated as the authority which passed the order dated 04.10.2018 i.e. the punishing authority was also part of the appellate authority and actively participated in arriving at the decision which was taken in respect of the appeal preferred by the petitioner against the said order of punishment.

Learned counsel for the petitioner cites the judgment in ***Writ Petition No.24629 of 2012 titled as Mohd. Chand and another vs. State of U.P. And others, decided on 22.05.2012*** passed by the Allahabad High

Court, wherein, it has been held that the same person, who has passed the basic order of punishment cannot participate so as to decide appeal preferred against the order passed imposing punishment but the order passed has to be tested neutral person. The relevant paragraph of the judgment is as under:-

*“There is another famous dictum based upon the principle of natural justice enshrined by Lord Hewart, C.J., which says "Justice should not only be done but should manifestly and undoubtedly be seen to be done" * Thus, it is cardinal that in the matter of dispensation of justice certain rules have to be observed which manifestly ensure that justice has been done and for that purpose it is essential that veracity of the judgment ought not to be allowed to be tested by the same person in appeal rather it should be tested by another person.*

Earlier as per the practice prevalent in the High Courts of India in the absence of any specific prohibition in law a practice prevailed of including judges in Bench against whose judgment the appeal is to be heard but slowly this practice was given up and fell in desuetude. In AIR 1963 SC 1 R. Vishwanathan Vs. Abdul Wajid while dealing with the issue of the practice of having judges making a reference to the larger Bench as a member of the larger Bench, it was observed that it is desirable that a judge should not take part in the determination of appeal against his own decision unless the statute expressly authorizes him to do so. The principle is that one who has made the decision having a judicial flavour should not participate in appeal arising from such a decision.”

Learned counsel for the respondents tried to distinguish the judgment in **Mohd. Chand's case (supra)** by pointing out that once a Board of Director is a body which includes more than one authority, merely that

the punishing authority participated in the meeting, will not render the decision invalid.

In this regard, once the same person who has passed the punishment/basic order, participates in the appeal proceedings so as to decide the legality of his/her order, mere participation is good enough to vitiate the said order.

The justice should not only be done but seems to have been done is the principle which needs to be followed and in the present case where the same Officer who has passed the order of punishment, also participates in respect of the appeal preferred against his/her own order, the principle mentioned hereinbefore, is violated.

Keeping in view the above, order dated 22.04.2019 (Annexure P-18) passed in appeal by the Board of Director is accordingly set aside. The respondents are directed to decide the appeal of the petitioner afresh in accordance with law.

As the appeal was preferred in the year 2018, let the respondents pass a fresh order on the appeal of the petitioner within a period of two months from the receipt of copy of this order.

In case, it is permissible to afford opportunity of hearing to the petitioner, the Board in its wisdom may allow the same to the petitioner.

The present writ petition is disposed of in above terms.

September 07, 2022
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : No