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

**CWP-8855-2019 (O&M)
Date of decision: 22.12.2022**

Sukhwinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Baltej Singh Sidhu, Senior Advocate,
with Mr. Rakesh Kumar, Advocate,
for the petitioner.

Mr. D.K. Singal, Addl.A.G., Punjab.

MAHABIR SINGH SINDHU, J.

Present writ petition has been filed under Article 226 of the Constitution, for quashing of the impugned order dated 20.03.2018 (P-5) passed by respondent No.1-Financial Commissioner and Secretary, Department of Rural Development and Panchayats, vide which, punishment for stoppage of two annual increments (without cumulative effect), along with recovery of an amount of ₹50,802/- was imposed against the petitioner; further prayer is for quashing of the impugned order dated 23.08.2018 (P-6), whereby, the aforesaid punishment order is reviewed to the extent of stoppage of one annual increment (without cumulative effect), but the recovery of ₹50,802/- remained intact.

2. Facts are not in dispute.

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3. Petitioner joined as Gram Sewak [re-designated as Village Development Organiser (for short, 'VDO')] in March, 2000. During the years 2000-2002, an amount of ₹31,59,058/- was received from the Central Government under various Schemes for Block Khuiyan Sarvar, District Ferozepur and out of which, ₹4,87,000/- were released in favour of Gram Panchayat, Village Bare Ke, for brick-lining of streets, including drainage under the scheme 'CD-2.36'. At relevant point of time, petitioner was working as VDO of the village.

4. Due to certain allegations for misuse of funds in the Block *Khuiyan Sarvar*, various inquiries were conducted; which in brief are as under:-

First inquiry

Respondent No.2-Additional Deputy Commissioner (Development), Ferozepur (*for short "ADC, Ferozepur"*) on receiving information regarding misuse of funds, marked an inquiry to the Deputy Controller (Finance & Accounts), Department of Finance (*for short "DCFA"*) vide letter dated 12.10.2002. Pursuant thereto, DCFA submitted an audit report dated 11.11.2002, whereby, irregularities were found to have been committed in the disbursement of funds by Suraj Singh Brar, the then Block Development and Panchayat Officer (*for short "BDPO"*). On the basis of aforesaid audit report, respondent No.2 prepared a report and forwarded the same vide letter dated 20.05.2003 (P-1) to respondent No.1 to the effect that out of total funds, an amount of ₹22,71,500/- was found to be spent in excess and ₹8,68,896/- is to be recovered from Suraj Singh Brar, BDPO.

Second inquiry

Respondent No.1 vide order dated 27.12.2004, asked Additional Deputy Commissioner (Development), Moga (*for short "ADC, Moga"*) to conduct regular departmental inquiry against aforesaid Suraj Singh Brar, BDPO. After examining the matter, report dated 23.05.2005 (P-2) was submitted, holding that all charges levelled against Suraj Singh Brar, were proved for recovery of ₹8,68,896/-.

Third inquiry

Again respondent No.1 vide order dated 25.03.2015 directed respondent No.2-ADC, Ferozepur to conduct regular departmental inquiry in the matter. In pursuance thereto, report dated 10.05.2017 (P-3) was submitted to the effect that Suraj Singh Brar is not alone responsible; rather the Panchayat Secretary/ VDO/Panchayat Officer/JE were also accountable as they did not bring the negligence of BDPO to the notice of senior officers. Resultantly, it was recommended that recovery be effected in equal shares from Suraj Singh Brar, BDPO; Kamalpreet Singh, J.E.; Pirthipal Singh, J.E.; Sukhwinder Singh, VDO/Gram Sewak (petitioner); Jagnandan Singh, Panchayat Secretary; Naib Singh, VDO/Gram Sewak; Jagroop Singh, VDO/Gram Sewak; and Guljeet Singh, Panchayat Secretary.

Vide letter dated 26.07.2017, charge-sheet was issued to petitioner along with Kamalpreet Singh, J.E.; Pirthi Pal Singh, J.E.; Madan Lal, SEPO; Jagnandan Singh, Panchayat Secretary; Guljeet Singh, Panchayat Secretary; Naib Singh, VDO; Jagroop Singh, VDO; under Rule 8 of the Punjab Civil Services [Punishment & Appeal Rules, 1970 (for short, 'the Rules of 1970')].

Fourth inquiry

On the basis above charge-sheet, again an inquiry was conducted by respondent No.2 and report dated 29.11.2017 (P-4) was submitted to the Secretary, whereby, an amount of ₹1,52,407/- was alleged to be recoverable from Suraj Singh Brar, BDPO; petitioner-Sukhwinder Singh, VDO; and Smt. Santosh, Sarpanch *Bare Ke*.

5. In response to the above inquiry report, petitioner filed his detailed reply; but without considering the same, respondent No.1, passed the impugned order dated 20.03.2018 (P-5). Feeling aggrieved, petitioner filed review, whereby, punishment was modified by respondent No.1 as stoppage of one annual increment (without cumulative effect) along with recovery of ₹50,802/-.

6. Hence, present writ petition.

7. It is contended by learned Senior counsel for the petitioner that post of VDO is governed under the statutory rules, namely, the Punjab, Department of Rural Development and Panchayats (Class-III) Service Rules, 1988 (*for short "the Rules of 1988"*). According to Appendix C of the aforesaid Rules, Director is the competent authority for imposing the punishment in question; whereas, impugned orders have been passed by the Secretary to Government of Punjab; hence petitioner's right to appeal stood curtailed. Further submitted that respondent No.1 while passing the impugned order did not take into consideration the earlier inquiries, whereby, Suraj Singh Brar, the then BDPO, alone was held responsible for misusing the funds. Also contended that after a period of 15 years, petitioner has been

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erroneously implicated on the basis of fourth inquiry without affording any opportunity of hearing. Again contended that petitioner filed detailed reply, but the Secretary did not consider the same while passing the impugned orders. Also contended that all four inquiries are contradictory to each other, hence carry no sanctity in the eyes of law. Lastly submitted that the Secretary was pre-determined to punish the petitioner, in view of the fact that earlier inquiries have been completely ignored.

8. On the other hand, learned State counsel contended that common proceedings were conducted against all the erring officials; hence Secretary was very much competent to pass the impugned orders. Also submitted that petitioner was afforded due opportunity of hearing and as such, this Court should not interfere in the findings of facts recorded by the authority below while exercising jurisdiction under Article 226 of the Constitution.

9. Heard learned counsel for the parties and perused the paper book.

10. Before proceeding further, it is necessary to recapitulate the relevant provisions of the Rules of 1988 and which read as under:-

“17. Discipline, Penalties and Appeals.-(1) In the matter of discipline, punishment and appeals, the members of the Service shall be governed by the Punjab Civil Services (Punishment and Appeal) Rules, 1970, as amended from time to time.

(2) The authority empowered to impose penalties as specified in rule 5 of the Punjab Civil Services (Punishment and Appeal) Rules, 1970 and the appellate authority thereunder in respect of the members of the service shall be as specified in Appendix ‘C’ to these rules.

(3)”

Appendix ‘C’
See Rule 17 (2)

Sr. No.	Designation	Nature of Penalty	Punishing Authority	Appellate Authority
1	2	3	4	5
Directorate of Panchyats Headquarters staff other than Intelligence unit Staff				
1 to 13				
CADRE II (FIELD STAFF)				
1 to 5		Minor Penalties- (i).... (ii).... (iii).... (iv) withholding increment of pay without cumulative effect..... Major Penalties- (v) to (ix).....	Director	Government
6	Gram Sewaks			
7 to 12				

11. From perusal of Rule 17 along with Appendix C (*ibid*), it is apparently clear that punishing authority for withholding increment of pay without cumulative effect from Gram Sewak (now VDO), would be the Director; whereas, the impugned orders have been passed by the

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Secretary to Government of Punjab, who concededly is the appellate authority under these rules. Although, learned State counsel raised a plea that in present case, common proceedings were initiated against the employees, including petitioner and as such, the Secretary was very much competent to follow such a course under Rule 12 of the Rules of 1970. For reference, Rule 12 is recapitulated as under:-

“12. Common Proceedings-

1. Where two or more Government employees are concerned in any case, the Government or any other authority competent to impose the penalty of dismissal from service on all such Government employees may make an order directing that disciplinary action against all of them may be taken in a common proceedings and, if the authorities competent to impose the penalty of dismissal on such Government employees are different, an order for taking disciplinary action in a common proceeding may be made by the higher or such authorities with the consent of the others.

(2) Any order under Sub-Rule (1) shall specify -

(i) the authority which may function as the punishing authority for the purpose of such common proceedings;

(ii) the penalties specified in Rule 5 which such punishing authority shall be competent to impose;

(iii) whether the procedure laid down in Rule 8 and Rule 9 or Rule 10 shall be followed in the proceedings.”

Aforesaid rule says that where two or more Government employees are concerned in a case, the Governor or any other authority competent to enforce the penalty of dismissal from service on all such Government employees may make an order directing disciplinary action against all of them in common proceedings. However, on repeated asking, learned State counsel was not able to show that for initiating common proceedings, any order was passed by the competent authority in terms of this rule; thus the contention of learned State counsel to that effect is not acceptable.

12. Moreover, it has come on record that four different inquiries were conducted in the matter and specific plea was raised by the petitioner in this regard, but from the impugned orders, not even a whisper is discernible to that effect; nor had the Secretary given any consideration to the reply filed by the petitioner.

13. In view of the foregoing discussion, the irresistible conclusion would be as under:-

(i) As per Rule 17 read with Appendix C of the Rules of 1988, the competent authority for imposing the punishment against the petitioner was Director, but the impugned orders have been passed by the Secretary i.e. the Appellate Authority.

(ii) Respondents have failed to substantiate that any order was passed by the competent authority for taking recourse to the provisions of Rule 12 of Rules of 1970, regarding common proceedings in the matter.

(iii) Respondent No.1 while passing the impugned orders, neither adverted to the earlier inquiries; nor had

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considered the written explanation submitted by the petitioner.

(iv) While passing the impugned orders, petitioner has been deprived of his right of statutory appeal.

(v) Conclusions recorded in all four inquiries are contradictory to each other.

14. In view of the above, impugned orders are held to be not legally sustainable.

15. Consequently, writ petition is allowed with costs of ₹25,000/-, to be paid by the respondents; impugned orders dated 20.03.2018 as well as 23.08.2018 are hereby quashed and set aside.

16. Costs be deposited with the High Court Legal Services Committee; however, State of Punjab would be at liberty to recover the same from the erring officer(s).

17. Respondents, in case so desire, may take action regarding misutilization of funds, if any, against the delinquent(s), in accordance with law.

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

22.12.2022

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(MAHABIR SINGH SINDHU)
JUDGE

Whether speaking / reasoned :

Yes

No

Whether Reportable :

Yes

No