

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

CWP No.13051 of 2015 (O&M)

Date of Decision.16.08.2022

Gurdeep Singh Pannu

...Petitioner

Vs

State of Punjab and another

...Respondents

CORAM:HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate
for the petitioner.

Ms. Deepali Puri, Addl. A.G., Punjab.

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JAISHREE THAKUR J. (ORAL)

The petitioner herein seeks to challenge the order dated 05.09.2013 (P-1) vide which four annual increments have been stopped with cumulative effect and further quash the order dated 29.11.2013/03.12.2013 (P-2) by which the punishment has been enhanced without jurisdiction and order dated 19/20.05.2015 (Annexure P-3) by which appeal of the petitioner has been dismissed.

In brief, the facts are that the petitioner was issued a charge-sheet under Rule 8 of the Punjab Civil Service (Punishment & Appeal) Rules, 1970. A reply was filed to the charge-sheet and the Enquiry Officer appointed proved the charges. Vide order dated 05.09.2013, the punishing authority awarded punishment of stoppage of four annual increments with cumulative effect. This order was reviewed by the Principal Secretary to the Government of Punjab, Department of Home Affairs & Justice, who formed an opinion that the petitioner was superannuating on 31.05.2015 and therefore, the punishment of stoppage of four annual increments with

cumulative effect could not be implemented. On reconsideration, the order dated 05.09.2013 was then modified to the effect of withdrawing the higher pay scale of Rs.14,300-18,500/- granted to the petitioner w.e.f. 01.01.2004 on completion of 14 years of service in the PPS cadre. Aggrieved against the said order, an appeal was preferred, which was dismissed.

Learned Senior Counsel assisted by Mr. Sunil Hooda, Advocate for the petitioner would contend that the order dated 29.11.2013/03.12.2013 whereby order dated 05.09.2013 has been modified, would not be sustainable in the light of the fact that no prior notice was given to the petitioner before modifying the said order and withdrawing the higher pay scale given to him as far back as 2004. In support of his argument, he would rely upon the judgment passed by the Jharkhand High Court in *M/s Magadh Engineering Works Vs. Provident Fund Commissioner E.P.F.O., Ranchi and others 2009 (4) JLJR 653*.

Per contra, learned counsel appearing on behalf of the respondent-State would submit that the order of punishment of stoppage of four annual increments had been passed by the punishing authority after giving due notice to the petitioner. It is submitted that as the petitioner was going to attain the age of superannuation and retire from service on 31.05.2015, it would not be possible to implement the punishment imposed upon him and therefore, it was decided to modify the order to the extent of withdrawing the higher pay scale given to him. It is further submitted that the appeal filed was duly considered and he was given a personal hearing and it is only thereafter that the appeal was rejected by the Government vide order dated 19/20.05.2015.

I have heard learned counsel for the parties and with their

assistance have gone through the pleadings of the case and the case law as relied upon by the petitioner. The facts of the case are not in dispute that the petitioner was issued chargesheet under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970. The enquiry officer submitted his enquiry report and the punishing authority thereafter awarded punishment of stoppage of four annual increments with cumulative effect. This order came to be *suo motu* modified by the Principal Secretary to the Government of Punjab and the punishment as awarded was modified from stoppage of four annual increments with cumulative effect to withdrawal of the pay scale of Rs.14,300-18,500/- granted to the petitioner w.e.f. 1.1.2004. This was done by taking into account that punishment of stoppage of four annual increments with cumulative effect could not be imposed upon the petitioner, as he was due to retire within a period of two years thereafter. The rules of natural justice would envisage that any order detrimental to the person concerned, must be passed after giving reasonable opportunity of hearing, which has not been done in the instant case. Even Rule 16.28 of the Punjab Police Rules, 1934, which empowers the Inspector General, Deputy Inspector General and Superintendent of Police or the State Government to review any proceedings, provides that where the officer proposes to enhance an award, he shall give an opportunity of showing cause to the delinquent officer either personally or in writing why his punishment should not be enhanced. Even Rule 21 of the Punjab Civil Service (Punishment & Appeal) Rules, 1970 clearly envisages that no order imposing or enhancing any penalty shall be made by the reviewing authority unless the government employee has been given a reasonable opportunity of making a representation against the penalty proposed. Both the Punjab

Police Rules,1934 as well as the Punjab Civil Service (Punishment & Appeal) Rules, 1970 clearly envisage that due opportunity of hearing has to be given in case there is any proposal for imposing or enhancing any penalty, which have clearly not been followed in the instant case.

In view of the aforesaid facts and circumstances, this Court is of the opinion that the petitioner was not given any reasonable opportunity of hearing before passing the impugned order, modifying the punishment of stoppage of four annual increments with cumulative effect and imposing the penalty of withdrawal of higher scale allowed to the petitioner as far back as 2004 on completion of 14 years in PPS Cadre. Consequently, the instant petition stands allowed and the impugned orders dated 29.11.2013/03.12.2013 (P-2) & 19/20.05.2015 (P-3) are hereby set aside. However, the respondent-department will have the liberty to initiate fresh proceedings against the petitioner, if they so desire in accordance with law, while complying with the principles of natural justice.

(JAISHREE THAKUR)
JUDGE

August 16, 2022

Pankaj*

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No