

239

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

CWP No.12190 OF 2016 (O&M)

Date of Decision : 22.07.2022

Vasant Hooda

...Petitioner

Versus

State of Haryana

...Respondent

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ashwani Kumar Chopra, Sr. Advocate
with Mr. B.S. Nahar, Advocate
for the petitioner.

Mr. Pankaj Middha, Additional Advocate General, Haryana.

ARUN MONGA, J. (ORAL)

Petitioner herein, *inter alia*, seeks issuance of a writ in the nature of certiorari for quashing order dated 17.12.2015 (Annexure P-8), whereby memorial preferred by the petitioner (Annexure P-7) against impugned order dated 12.03.2014 (Annexure P-6) imposing major penalty of compulsory retirement from service upon him was rejected.

2. Succinct facts first. Petitioner at the relevant time was posted as the District Town Planner, Jind. In the year 2007, one Smt. Kiran Bala, an Asst. Draftsman in the same office, filed a complaint alleging sexual harassment by petitioner. Incidents were stated to be between the years 2006 & 2007. Complaint was inquired into by the Additional Deputy Commissioner, Jind. Thereafter, on 15.10.2007, the complainant, however, compromised the matter and withdrew her

complaint. Notwithstanding, three years after the said compromise/settlement, the department issued charge-sheet dated 09.11.2010 (Annexure P-1) to the petitioner under Rule 7 of the Haryana Civil Services (Punishment and Appeal) Rules, 1987 (*hereinafter referred to as '1987 Rules'*). It contained the same set of allegations as in the withdrawn complaint qua which inquiry had already been carried out. Petitioner submitted a detailed reply to the charge-sheet but yet departmental inquiry was ordered. In the year 2011, the petitioner suffered a brain stroke and was rendered disabled and paralyzed to the extent of 80%. Subsequently, in the year 2013, complainant also stated that since the petitioner and his wife had apologized, no action was required to be taken against them. The inquiry officer vide his report (Annexure P-3) recommended/opined that the matter needed to be closed, as petitioner had been punished by nature, given his medical condition. However, vide memo dated 09.07.2013, the respondent – Principal Secretary to Govt. Haryana, while sending a copy of the inquiry report holding that the inquiry officer could not recommend closure of departmental proceedings yet asked to the petitioner to make a written representation to the Government, if so advised, so that further action could be taken in the matter. Accordingly, the petitioner submitted his representation (Annexure P-5) which did not find favour and vide a punishment order dated 12.03.2014 (Annexure P-6) punishing authority awarded major penalty of compulsory retirement. An appeal preferred by the petitioner was also rejected vide impugned appellate order dated 17.12.2015 (Annexure P-8).

3. Learned senior counsel for the petitioner argues that since the complainant, clearly deposed before the inquiry officer that she did not

want any further action against the petitioner, the matter ought to have been closed there and then and no departmental proceedings were warranted thereafter. He further argues that the complainant did not depose at all with regard to alleged charges and further there was no other evidence adduced to establish the alleged charges. Even the inquiry officer also recommended that the matter needed to be closed. Furthermore, he argues that statutory mandate of Rule 7(6) of 1987 Rules was also not complied with as no show cause notice within the meaning of Rule *ibid*, was served upon petitioner conveying the provisional conclusion of mind of the punishing authority to impose major penalty of compulsory retirement.

4. *Per contra*, learned Additional Advocate General argues that it is borne out from record that the petitioner had intentionally delayed releasing the salary of the complainant twice, on one pretext or the other, and left no stone unturned to harass her. He further argues that a deeper perusal of the report of the inquiry officer reflects that conduct of the petitioner was against propriety and code of conduct of a male superior officer vis-à-vis a female official. It was only keeping in mind his state of health and unconditional apology tendered by him that the inquiry officer recommended that the matter be closed. Otherwise, the petitioner is delinquent, he argues. He further argues that job of the inquiry officer was only to see whether the charges stood proved or not. In the case in hand, he had exceeded his jurisdiction by recommending the case to be closed. Since the charges stood proved, pertained to the period when the petitioner was in his full senses and was drawing full pay from the Government, imposing major penalty of compulsory retirement is, therefore, totally justifiable. As regards the argument of violation of Rule

7(6) of 1987 Rules, the learned Additional Advocate General argues that non-serving of notice of quantum of punishment is not such vital fallacy that it can result into setting aside the whole proceedings, more so, when in the case in hand, the petitioner had already submitted his explanation vide representation (Annexure P-5) which was duly considered by competent authority.

5. In the aforesaid backdrop, I shall now proceed to deal with the rival contentions and discuss the same and record my opinion thereon.

6. First, it would be relevant to reproduce here applicable service rules i.e. Rule 7(6) of 1987 Rules which is as below:-

“(1) No order of imposing a major penalty shall be passed against a person to whom these rules are applicable unless he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

xxxxxxxxxxxx

(6) After the enquiry against a Government employee has been completed, and after the punishing authority has arrived at a provisional conclusion in regard to the penalty to be imposed, the Government employee shall, if the penalty to be imposed is major penalty be supplied with a copy of the report of the enquiring authority and be called upon to show cause within reasonable time, not ordinarily exceeding one month against the particular penalty proposed to be inflicted upon him. Any representation submitted by him in this behalf shall be taken into consideration before final orders are passed:

Provided that if the punishing authority disagrees with any part or whole of the findings of the enquiring authority, the point or points of such disagreement, together with a brief statement of the ground thereof, shall also be supplied to the Government employee.

xxxxxxxxxxxx”

7. Coming now to the case in hand, let us have a look at the alleged delinquency vis-à-vis the inquiry conducted qua the same and the report rendered therein. Vide Memorandum dated 09.11.2010 (Annexure

P-1), petitioner was served charge-sheet under Rule 7 of 1987 Rules.

Statement of allegations against the petitioner are as under:-

“Sh. Vasant Hooda during his posting, as District Town Planner, Jind from 30.01.2006 to 05.07.2010 had committed the following acts of omission and commission:-

- 1. That as per the Government instructions, Sh. Vasant Hooda, District Town Planner, Jind was required to disburse the pay of the staff on every first day of the month. But Sh. Vasant Hooda, District Town Planner, intentionally delayed the issuance of salary to Smt. Kiran Bala, Assistant Draftsman, for the month of September, 2006 and December, 2006 without assigning any reason.*
- 2. That Sh. Vasant Hooda, District Town Planner, had organized a function for his family in the premises of Rangshala, Jind on 12.05.2007. All the employees of the office of District Town Planner, Jind were also invited in this programme. During the cultural programme, Sh. Vasant Hooda, District Town Planner, had called Smt. Kiran Bala, Assistant Draftsman on the stage and asked her to dance and on her refusal, threatened her loudly to treat her as absent from duty.*
- 3. That Sh. Vasant Hooda, District Town Planner, on other occasion, orally directed Smt. Kiran Bala Assistant Draftsman to go to his house for cooking his meal. On refusal to do this work, Sh. Vasant Hooda, District Town Planner, had harassed Smt. Kiran Bala, Assistant Draftsman and treated her on leave even though she was present in the office.*
- 4. That on 28.06.2007 at 9.00 AM, Sh. Vasant Hooda, District Town Planner had directed Smt. Kiran Bala, Assistant Draftsman to accompany him to his house as his wife and children were away to their maternal grandfather's house. The staff of the office and the visitors heard this conversation which had further increased the mental agony of Smt. Kiran Bala, Assistant Draftsman. After this incident, Sh. Vasant Hooda, District Town Planner, had again intentionally delayed the salary for the month of June, 2007 to Smt. Kiran Bala, Assistant Draftsman.*

In this way, Sh. Vasant Hooda, District Town Planner has shown disrespect to the female staff member and harassed her unnecessarily and thus has violated Rule 3(i)(ii) and (iii) of the Haryana Government Employees (Conduct) Rules, 1966.

The lapses detailed above constitute grave misconduct on the part of Sh. Vasant Hooda, District Town Planner, rendering him liable for strict disciplinary action.”

8. At the very threshold, the petitioner when he submitted his reply pointed out to the Punishing Authority that, apart from denying all the charges on merits, even otherwise, in the enquiry conducted by the ADC, Jind for the period 09/2006 to 07/2007 in regards to allegations made by the complainant, not only was petitioner not indicted in any manner, on the other hand, the complainant had already compromised and settled the matter and had consented to withdraw her complaint.

9. The compromise arrived between the parties which was the very genesis of issuance of charge-sheet was forwarded to the Director of the Town and Country Planning (Head of Department) on 08.11.2007. Be that as it may, the competent authority being dissatisfied with the reply to the charge-sheet, proceeded to appoint an inquiry officer.

10. The findings rendered by the inquiry officer and conclusion thereof are summarized as below:-

“From the perusal of the record and discussion that took place, it is candid that Sh. Vasant Hooda, the Charged Officer is guilty of asking Smt. Kiran Bala, Assistant Draftsman to participate in the cultural programme arranged, asking her to iron his clothes and also to cook food at his residence on the visit of STP, Hisar as detailed in allegation No.2, 3, 4 of the charge sheet served upon Sh. Vasant Hooda vide Memo No.1/14/2010-ITCp dated 09.11.2010. The arguments and justification given by Sh. Hooda in his well worded reply dated 25.11.2010 stand virtually demolished in the wake of the written assurance given by him on 15.10.2007 and the unconditional apology tendered on 18.05.2013 during this enquiry. Hence the conduct of the officer is against propriety and code of conduct. It is also worth recording that Sh. Hooda when came for hearing before me, appeared to be in a very degraded state of health due to a major neurosurgery and paralysis affecting virtually half of his body. He could enter may came officer only with the assistance of his wife and brother.(sic) It appears that he has been punished by the almighty for the wrongs done by him as the divine justice. Moreover, Smt. Kiran Bala and her husband have also forgiven him for this misconduct on the request made by Sh. Hooda and his wife. Keeping in

view this divine justice, the unconditional apology tendered by Sh. Hooda and the assurance given by him not to repeat this mistake in future above all the lifelong physical handicap he has already suffered at the hands of Almighty, the matter needs to be closed as Sh. Vasant Hooda has been sufficiently punished by nature.

The report is submitted for consideration and further necessary action.”

11. In the aforesaid background, Rule 7(6) supra assumes significance, inasmuch as, it appears that there has been no compliance thereof. It would not be incorrect to state that while the petitioner was hoping that the entire controversy had been given a quietus not only by the inquiry officer but even otherwise, there was no surviving grievance of the complainant and in the entirety thereof, the recommendations of enquiry report would be accepted. No doubt, that the punishing authority is not bound to accept the inquiry report. But, the non-acceptance thereof and the subsequent action arising therefrom has to be in accordance with the service rules, which envisage certain protections for the employee, keeping in mind the broader principles of natural justice so as to avoid use of the employer's dominant position. In this regard, while I am in agreement with the punishing authority that the scope of the inquiry is confined only to inquire into the charges and render findings, whether or not delinquent employee is guilty or not guilty.

12. It is thus not open to the inquiry officer to assume the position of either punishing authority and/or any recommending authority making either favourable or adverse recommendations. Any such recommendations, if made, have no force of law and/or are not permissible otherwise. To that extent, even if one were to agree with the personal view expressed by the inquiry officer, inasmuch as, that the petitioner seems to have been punished by the Almighty for the wrongs

done and, if it is assumed that he is guilty, he has already suffered more than the punishment, which department would have awarded; but as already noted, these are at best personal views of inquiry officer. The fact of course is that the said view of the inquiry officer did not find favour with the punishing authority as is borne out from his following observations leading to the award of the impugned punishment:-

“After considering the representation of the delinquent officer and all facts and circumstances, the Government is of the opinion that reply of the charged officer submitted by him vide his letter dated 03.12.2013 is not at all convincing. Though it is a fact that he has suffered brain stroke subsequent as a result of which, he has suffered mental and physical agony but the act of omission and commission pertain to the period when he was fully fit and in his senses. The charges contained in the charge sheet are very serious which pertain to, in a way, outraging the modesty of a woman. The Inquiry Officer in his report has clearly held that the conduct of the officer was against proprietary and code of conduct. However, keeping in mind his present state of health and unconditional apology tendered by him as well as assurance not to repeat this mistake in future, the Inquiry Officer has recommended that the matter be closed. It is evident that the Inquiry Officer has exceeded his jurisdiction by recommending the case to be closed. His only job is to conduct Inquiry and give findings whether the charges have been proved or not. Therefore, in view of the fact that the charges stand proved which were committed by the charged officer when he was in full senses and was drawing fully pay from the Government, this kind of action on his part was totally uncalled for being a Class-I Officer and the Government is not tolerating such kind of misconduct towards women employees on the part of its Senior Officers.

Therefore, the Governor of Haryana is pleased to impose a major penalty of compulsory retirement from the service upon Sh. Vasant Hooda, the then District Town Planner, Jind (Now District Town Planner, Narnaul) with immediate effect.”

13. Pertinently, the aforesaid punishment order ought to have been passed after issuance of the mandatory prior show cause notice so as to put the petitioner under caution qua the nature of punishment which

was proposed to be awarded to him by the punishing authority. The so-called notice dated 09.07.2013 (Annexure P-4) which has been relied in the course of arguments by the learned State counsel, by no stretch of imagination, can be termed as notice under Section 7(6) of 1987 Rules. To say the least, not only the said notice is cryptic but even otherwise if it is read in its entirety or breaking down into pieces, either way, does not suggest that the aforesaid notice contemplated awarding of any punishment as harsh as compulsorily retiring the petitioner from service at the age of barely 50 years, when he still had many more years left to superannuate, depending, of course, on being accorded extension, in accordance with his service record, which concededly otherwise was unblemished till the complaint in question, which too was also later settled and compromised.

14. Let us see as to what the notice termed as one under Rule 7(6) of 1987 Rules issued to the petitioner envisaged, which is reproduced herein below:-

“Subject: Disciplinary action under Rule-7 of Haryana Civil Services (P&A) Rules, 1987 against Sh. Vasant Hooda, (the then District Town Planner, Jind), Now District Town Planner, Narnaul.

Reference Government letter No.1/14/2010-ITCP dated 05.04.2013 on the subject cited above.

2. It is intimated that the Inquiry Officer submitted his inquiry report on the subject cited case to the Govt. vide his letter dated 27.05.2013 in which the Inquiry Officer has proved the charges but suggested to close the matter. Though the Inquiry Officer is not supposed to opine regarding punishment, therefore, a copy of the inquiry report is sent herewith to you with the request to make a written representation to the Govt. within a period of one month from the date of issue of this communication, if you so desire, so that further action could be taken in the matter, failing which it will be presume that you have nothing to say in the matter and final decision will be taken accordingly.”

15. A perusal of the above would reflect that what the notice (Annexure P-4) envisages is that the punishing authority is not in agreement with the recommendations given by the inquiry officer, even though, on the other hand, that the petitioner's conduct was against propriety and code of conduct of male superior officer vis-à-vis a female official. Accordingly, the petitioner was asked to give his written representation qua inquiry report, failing which, further action would be taken in the matter by the punishing authority. The mandatory requirement of nature of punishment and quantum of punishment as envisaged under Rule 7(6) *ibid* is completely amiss in the said notice. I am, therefore, of the opinion that the notice at best was qua the disagreement of the punishing authority with respect to the recommendations made by the inquiry officer and, therefore, the petitioner was only given opportunity as to why the punishing authority should not formally record his note of disagreement and propose a punishment.

16. The petitioner did give his detailed reply (Annexure P-5) in response to the said so-called notice. However, the petitioner seemingly was completely dumbstruck with the sudden awarding of the punishment vide impugned order (Annexure P-6), not only by denying him the opportunity to defend himself as to why the aforesaid punishment ought to have been not awarded and, on the other hand, for denial of reasons recorded by the punishing authority as to why his defence qua inquiry report was not acceptable to him. Subsequently, even the petitioner's memorial to the Hon'ble Governor was rejected vide impugned order (Annexure P-8) dated 17.12.2015.

17. Learned State counsel vehemently relies upon the Apex Court judgment titled as ***State Bank of India and another vs. Mohamad Badrudin, 2019(3) SCT 641*** to contend that non-serving of notice of quantum of punishment is not such a vital fallacy that it can result into setting aside the whole proceedings. At the most, by way of serving quantum of notice to the delinquent officer, it is only to be intimated what kind of punishment is proposed to be imposed and if at all, any explanation is to be given by the delinquent officer, then at the best he has to be given a chance for the needful, and in this case the petitioner had already submitted his detailed reply dated 01.12.2013 (Annexure P-5).

Relevant paras of the judgment *ibid* are reproduced herein below:-

“21. The omission of the words from clause (2) of Article 311 of the Constitution reproduced above completely changes the requirement of serving notice in respect of the proposed punishment. The amended provisions of Article 311 of the Constitution of India have been considered in Mohd. Ramzan’s case and later in B. Karunakar’s case. The judgment of this Court in Nicholas Piramal India Limited arises out of an Award passed by the Labour Court under the Industrial Disputes Act, 1947. The jurisdiction of the Labour Court is much wider where the punishment can be reviewed by the Labour Court in terms of Section 11-A of the said Act.

22. This Court in Punjab National Bank and Others v. K. K. Verma 11 has taken the same view that right to represent against the proposed penalty has been taken away by the 42nd Amendment. It was so held:

“32. Thus, the right to represent against the findings in the inquiry report to prove one's innocence is distinct from the right to represent against the proposed penalty. It is only the second right to represent against the proposed penalty which is taken away by the 42nd Amendment. The right to represent against the findings in the report is not disturbed in any way. In fact, any denial thereof will make the final order vulnerable.”

23. Thus, the requirement of second show cause notice of proposed punishment has been dispensed with. The mandate now is only to apprise the delinquent of the Inquiry Officer's report. There is no necessity of communicating proposed punishment which was specifically contemplated by clause (2) of Article 311 prior to 42nd Amendment."

18. From perusal of the judgment *ibid*, it would appear that reliance placed by the learned State counsel is misdirected. The ratio therein is in the context of Article 311 of the Constitution of India. In fact, the shoe is on the other foot in the case in hand when analysed in the context of applicable Rule 7(6) reproduced earlier, which specifically mandates that after the punishing authority has arrived at a provisional conclusion in regard to the penalty to be imposed, the Govt. employee shall, if the penalty to be imposed is a major penalty be *inter alia* called upon to show cause against the particular penalty proposed to be inflicted on him. While there is no quibble about the ratio of the Apex Court judgment *ibid*, but I am not inclined to agree with the learned State counsel with regard to its applicability in the present case.

19. As an upshot of the discussion above, the writ petition is allowed to the extent that the impugned orders dated 12.03.2014 (Annexure P-6) and 17.12.2015 (Annexure P-8) are set aside. Consequently, the respondents are directed to reinstate the petitioner in service w.e.f. the date of passing of the impugned order (Annexure P-6) alongwith all consequential monetary/service benefits arising therefrom including interest @ 4% p.a.

20. Before parting with the matter, it is made clear that principle of no work no pay would not apply in the present case since the petitioner was throughout available but due to administrative orders impugned herein, he was not allowed to join duty and therefore he cannot be

subjected to double jeopardy wherein having been deprived of his right to work and on the other hand non-payment of salary for relevant period for no fault of his. The fact that the petitioner suffered a brain stroke and was rendered disabled and paralysed to the extent of 80% is an extenuating circumstance in his favour.

21. Since the main case has been decided, the pending civil miscellaneous application, if any, also stands disposed of.

JULY 22, 2022
ashish

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No