

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

CWP-26315-2015 (O&M)
Date of Decision: 03.08.2022

Narinder Kwatra

..... Petitioner

Versus

State of U.T., Chandigarh and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. B.B.Bagga, Advocate,
for the petitioner.

Mr. Vishal Gupta, Advocate,
for the respondents.

RAJBIR SEHRAWAT, J. (ORAL)

This is a petition filed under Articles 226/227 of the Constitution of India seeking issuance of a writ of certiorari quashing the impugned order dated 22.01.2015 (Annexure P-7) passed by respondent No.2 and quashing of impugned order dated 15.10.2015 (Annexure P-9) passed by respondent No.1; as also seeking issuance of a writ of mandamus directing the respondents not to effect recovery from the salary of the petitioner; and as also seeking issuance of a writ mandamus directing the respondents to refund the amount already recovered from the salary of the petitioner.

The case of the petitioner, in nut shell, is that the petitioner was working as a Junior Assistant with the respondents in the year 2012. The petitioner had supplied some materials on credit to M/s World Rubber Industries without any authority. For the said act, the petitioner was issued

the charge-sheet. Inquiry was held in the matter. The Inquiry Officer held the petitioner guilty of the charge. The punishing authority agreed with the Inquiry Officer and imposed upon the petitioner a punishment of stoppage of six annual increments with cumulative effect; along with recovery of amount of Rs.19 lakhs in installments of Rs.22,000/- per month. The petitioner preferred statutory appeal before the appellate authority. After going through the facts of the case available on record, findings of the Inquiry Officer, orders of the Managing Director, CITCO and pleading made by the petitioner during personal hearing, finding no merit in the appeal, the appellate authority dismissed the same vide its order dated 29.09.2015. Thereafter, the petitioner also represented to the Board of Directors of the respondent-Corporation on 12.02.2018; for reconsideration on the punishment imposed upon him. After reconsidering the representation of the petitioner, the Board of Directors passed the following order on 04.07.2018:-

“after discussion and taking a lenient view, the Board approved reduction in punishment of 'stoppage of 06 increments with cumulative effect' to 'stoppage of 03 increments with cumulative effect' along with recovery of pending amount as per the recommendations of the committee.”

Still feeling aggrieved, the petitioner had filed the present petition.

Arguing the case, learned counsel for the petitioner has submitted that M/s World Rubber Industries was an approved purchaser. As per the sales policy of the Corporation, the facility of supplies on credit to the said purchaser was permissible. The petitioner had done only that much.

Therefore, no fault could be found in the action of the petitioner.

Learned counsel for the petitioner has further submitted that since no fraudulent intention has been attributed to the petitioner in the said transactions, therefore, the alleged loss could not have been recovered from the petitioner. To that extent, the order is totally without any basis. Learned counsel has further submitted that in two other cases as well, the other employees had made supplies on credit against the post dated cheques, which ultimately defaulted. However, the respondents had not initiated any action against those employees. Therefore, the petitioner has been discriminated, by singling out him for punishment.

On the other hand, learned counsel for the respondents has submitted that the procedure prescribed for holding the inquiry against the petitioner has been duly followed. Full opportunity of being heard has been granted to the petitioner in accordance with the rules. The petitioner has even admitted that there was a lapse on his part and the same has happened because of lack of proper training to the petitioner. Qua the aspect of the sales policy, learned counsel for the respondents has submitted that if, at all, any credit was to be extended that could have been extended by the competent authority; which is prescribed to be the General Manager of the respondent-Corporation. No other officer was entitled to extend the facility of credit to any person. It is also submitted by the learned counsel that even on the quantum of punishment, the necessary relief has been granted by the Board of Directors of the respondent-Corporation as deemed appropriate by reducing the punishment. Hence, no interference with the impugned order is

required.

Having heard the learned counsel for the parties, this Court does not find any substance in the arguments raised by the learned counsel for the petitioner. A perusal of the record shows that the factum of supply being made by the petitioner on credit; is not even in dispute. The initial assertion of the petitioner has been that he made supplies by mistake on account of lack of proper training on the part of the respondent-Corporation. However, this can hardly be any ground to be taken by an employee to justify his alleged misconduct. Moreover, the petitioner has tried to rely upon the policy of the respondent-Corporation, though not placed on record. The counsel has referred to a document (Annexure P-10) in his support and to address his argument that the matter was considered by the Board of Directors of the respondent-Corporation and the supply on credit was made permissible. However, even that document shows that the pre-existing policy of the respondent-Corporation was only to extend the facility of credit against the bank guarantee and security. Although, the proposal for extending the credit facility against post dated cheques was proposed before the Board of Directors, however, no such decision was taken by the Board of Directors, as such. There is no other document to show that the petitioner was authorized to make supplies against the credit. Hence the respondent-Corporation cannot be held at fault for initiating the disciplinary proceedings against the petitioner and in punishing him; in accordance with law.

Learned counsel for the petitioner has referred to the cases of two more employees by asserting that in those two cases also, the employees

had extended the facility of supplies on credit but no action was initiated against those employees. However, this can hardly be a defence permissible for the petitioner. The petitioner cannot raise plea of discrimination if some other person is not punished for the similar alleged misconduct. There is no right to equality in illegality. This plea of discrimination could have been available to the petitioner only in case a legal right available to the petitioner would have been violated by discriminating against him viz-a-viz the other persons. However, no such right is available to the petitioner in this case. Hence, this argument of the learned counsel for the petitioner is liable to be rejected.

Although, learned counsel for the petitioner has made submissions qua the quantum of punishment as well, however, this Court does not find itself in agreement with the argument raised by the learned counsel for the petitioner even on that count. The issue of quantum of punishment is better left to the discretion of the punishing authority. It would not be appropriate for this Court to interfere with the quantum of punishment unless this Court finds the punishment to be so disproportionate to the misconduct alleged against the petitioner so as to shock the conscience of the Court. However, in the present case, the record itself shows that the punishment of stoppage of six annual increments with cumulative effect and recovery imposed upon the petitioner has already been reduced to the punishment of stoppage of three annual increments with cumulative effect and the recovery.

To challenge the punishment of recovery imposed upon the

petitioner, learned counsel for the petitioner has submitted that since no fraudulent intention is alleged against the petitioner, therefore, the recovery of alleged loss could not have been effected from him. Learned counsel has relied upon a judgment of Hon'ble the Supreme Court, rendered in **Syed Abdul Qadir and others Vs. State of Bihar and others (2009) 3 Supreme Court Cases 475**, to buttress his argument. However, even the said judgment does not help the case of the petitioner. In the said case, the employer had made excess payment by misinterpretation of the rules of entitlement of the employee. There was no fraud or misappropriation held on behalf of the employee. In that gamut of fact, the Court had said that the recovery from the employee was not justified. In the present case it is the reverse process. The petitioner, who was responsible for managing the sales, extended the benefit of supply on credits without there being authorization from the competent authority in that regard. Therefore, the intention of the petitioner is immaterial. If on account of unauthorized action of the petitioner, some loss has been incurred by the respondent-Corporation then the respondent-Corporation would be fully entitled to recover the same from the petitioner, but in accordance with law. This Court does not find the punishment imposed upon the petitioner, as modified by the Board of Directors of the respondent-Corporation, to be disproportionate to the misconduct alleged against the petitioner. Hence, it is not appropriate for this Court to interfere even qua the quantum of punishment.

Moreover, the punishment imposed upon the petitioner has been imposed after following the prescribed procedure under the relevant rules.

This Court is not expected to sit as a Court of appeal over and above the action taken by the departmental authority. There is no allegation of any malafide intention on the part of the punishing authority or the appellate authority; alleged by the petitioner. There is no allegation of violation of the statutory procedure as such. In that situation, this Court is not required to re-appraise the material on inquiry file only because a different finding in favour of the petitioner/employee could have been possible. Accordingly, this Court does not find any ground to interfere in the matter.

In view of the above, finding no merit in the present case, the same is dismissed.

(RAJBIR SEHRAWAT)
JUDGE

03.08.2022
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No