

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 1375 of 2017
Date of decision: 22.07.2022

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Jagdish Singh

....Appellant(s)

Versus

Pepsu Road Transport Corporation and others

....Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. S.S. Kamboj, Advocate,
for the appellant.

Mr. Anil Sharma, Advocate,
for the respondents.

G.S.SANDHAWALIA, J.

The present letters patent appeal is directed against the order dated 05.05.2017 passed by the learned Single Judge in ***CWP No. 9602 of 2017, Jagdish vs. Pepsu Road Transport Corporation and others.***

In sum and substance, the learned Single Judge as such noticed the fact that the employee had already been punished on 16.04.2017 whereby, the penalty of stoppage of 4 annual increments with cumulative effect had been imposed upon him. The conclusion arrived at was that on reconsideration of the matter by the higher authorities, the appointment of the appellant being based on a forged document was *ab initio* null and void and, therefore, directions issued to cancel his appointment were justified. It

was accordingly held that show cause notice had been issued and personal

hearing had been given and, therefore, in the absence of any material being produced, the order which was passed cancelling his appointment on 9/12.04.2012 (Annexure P-4) was justified. The same had been upheld in appeal on 12.08.2013/04.09.2013 (Annexure P-5) and the review had thereafter been rejected on 08.04.2015 (Annexure P-6) holding that there was no provision for review (mercy petition) nor second appeal could be heard. It was accordingly held that the petitioner was not entitled for the benefit of the lenient view taken by the respondent-Corporation at an earlier point of time and it thus rendered him liable for major punishment, which had been rightly substituted by the Corporation on the directions of the higher authorities.

The short issue which arises for consideration is as to whether the learned Single Judge was justified in not taking into account the fact that the punishment order initially imposed by the competent authority had already been inflicted and adversely effected the appellant. There was a stoppage of 4 annual increments and whether the subsequent punishment imposed was permissible under the Pepsu Road Transport Corporation (Conditions of Appointment and Service) Regulations, 1981 (in short 'Regulations of 1981') as such on the same cause of action.

It is a matter of record that the employee was appointed as a Driver in the respondent-Corporation on 08.07.1991. On the basis of a complaint received in the year 2005, he was charge sheeted on 06.05.2005 on the ground of getting service on the basis of forged middle class certificate at the time of recruitment and breach of discipline. The Enquiry Officer as such had come to the conclusion that the certificate was false as per his report. Therefore, a show cause notice dated 29.11.2005 had been

issued to the appellant for imposing major penalty for termination of his services. The punishing authority, who was the General Manager concerned, as per the Regulations of 1981 being authorized to impose the penalty at that point of time, came to the conclusion that the appointment was 16 years back and there was no complaint as such against the employee. He had thus taken a lenient view and stopped 4 annual increments on permanent basis. Apparently, after a period of almost 5 years on 21.02.2012, the show cause notice was issued to him by the Additional Managing Director of the Corporation as to why his appointment as Driver may not be cancelled.

The reply to said show cause notice was as to under which provision the matter could be reopened once the order had been passed by the competent authority. The said issue was never dealt with by the Additional Managing Director at that point of time while passing the order of cancellation of his appointment on 9/12.04.2012. The same was thereafter upheld in appeal on 12.08.2013/04.09.2013 on the ground that the matter had been raised after directions by the Punjab Government Transport Department on 02.03.2011 and directions had been issued on 09.08.2011 that by taking the decision, the General Manager had taken a lenient view and he be charge sheeted and the Additional Managing Director was to decide the case.

Resultantly, the appeal was dismissed on 12.08.2013 (Annexure P-5) and the review thereafter has been dismissed on 08.04.2015 (Annexure P-6) on the ground that there is no provision of review nor the second appeal can be heard.

Apparently, the Regulations of 1981 provide for a right of

appeal to the employee against whom the penalties have been imposed as specified in Regulation 20 which includes dismissal from service under Clause (viii) and removal from service under Clause (vii). Under Clause 29, the punishing authority has to take into account the previous record of the employee and the gravity of the misconduct, extenuation or aggravating circumstances that may exist. The relevant clauses read thus:-

“29. Other Provisions Regarding Penalties:

In awarding punishments, the punishing authority shall take into account the previous record, if any, of the employee, the gravity of the misconduct and any other extenuation or aggravating circumstances that may exist. A copy of the order passed by the punishment authority shall be supplied to the employee concerned free of charge. The order of penalty shall take effect from the time it is served personally/ sent through regd. A.D.

Explanation:

Refusal of receiving shall amount to service of the Regd. A.D.

30. Appeal:

An employee upon whom any of the penalties specified in regulation is imposed may file an appeal to such higher authority, if any as specified in Co. 5 of the Appendix 'B'.”

Counsel for the Corporation could not point out as such that there was any such provision for review of the order or enhancing punishment in the absence of any appeal pending before the Additional Managing Director who was the Appellate Authority.

As noticed above, the punishing authority, at that point of time, had taken into consideration the length of service of the appellant as such

and noticed that he had almost 16 years of service at that point of time and there was no such complaint against him and he was performing his duty well and he would become unemployed at that point of time. In the opinion of the punishing authority, there were some extenuating factors and the record of the employee had been taken into consideration.

The action reopening the case in the absence of any provision for review was, thus, without any jurisdiction. Reliance can be placed upon judgment of the co-ordinate Bench of this court in ***Daya Singh vs. State of Haryana, 2002 (4) SCT 720***, where the charge sheet had been issued for obtaining LTC amounts wrongly, wherein one annual increment without cumulative effect had been imposed and the appeal had also been dismissed. However, the punishing authority thereafter on reconsideration, preferred to open the proceedings for imposition of major punishment and recalled the earlier order and imposed punishment of one increment with cumulative effect. Resultantly, it was held as under:-

“6. It is a settled rule of law that once a delinquent officer/official has been subjected to a departmental procedure in accordance with law and has been punished, he cannot be compelled to face another enquiry or punishment for the one and the same charge. In the present case, even the appellate authority had held as a matter of fact that it will not be appropriate to impose any higher punishment upon the delinquent. Once the appellate authority had affirmed the order and dismissed the appeal of the petitioners with the afore-noticed remarks, there was no jurisdiction vested in the lower authority i.e. respondent No. 3 to re-open the case and pass the impugned order of punishment. In disciplinary

proceedings power to review its own order cannot be read or construed unless such power was so vested in the authority under a specific provision. Admittedly, there is no provision of review vested in the authority which passed the order. The impugned order, thus, lacks inherent jurisdiction and is opposed to settled canons of service jurisprudence.”

In ***Surjit Kumar vs. State of Haryana and others, 2013 (3) SCT 477***, the principle of double jeopardy as such was applied. In the said case, stoppage of 5 annual increments with permanent effect was imposed on the police official which had been reduced to 3 in appeal. The reversion order from the rank of Inspector to the rank of Sub Inspector had also been imposed on account of the fact that there were adverse remarks in the ACR regarding the integrity and stoppage of 3 annual increments. It was accordingly held that stoppage of 3 annual increments with permanent effect had been imposed upon him and, therefore, the reversion as such would amount to a second punishment and it will amount to inflicting one more penalty on the appellant for the same misconduct and the same was set aside by the co-ordinate Bench.

In the present case also, the same principle would be applicable in as much as for the intervening 5 years, the appellant's 4 increments as such with cumulative effect had already been stopped. He had already suffered a monetary loss on the said account and by imposing the subsequent order of punishment of cancelling his appointment on 07/09.04.2012, he had been punished twice for the same charge. The appellant has thus been punished twice for the same misconduct as such, which is not permissible.

The same view was taken by the Apex Court in ***Lt. Governor, Delhi and others vs. H.C. Narinder Singh, (2004) 13 SCC 342***, wherein disciplinary

action had culminated in reduction of pay at one stage without cumulative effect against which the appeal had been dismissed. The second show cause notice to remove his name from the promotion list on the same cause of action as such had been proposed and which was challenged before the Tribunal successfully. The principle was upheld by the Apex Court by holding as under:-

1. *“4. Reading of the show-cause notice suggests as if it is in continuation of the departmental proceedings. Lack of devotion to duty is mentioned as the reason for the proposed action which was the subject-matter of the earlier proceedings as well. The second proposed action based on the same cause of action proposing to deny promotion or reversion is contemplated under the impugned show-cause notice. Second penalty based on the same cause of action would amount to double jeopardy. The Tribunal was, therefore, right in law in annulling such an action. We are not expressing any opinion on the ambit or scope of any rule.”*

Thus, on the two accounts as noticed above, on the issue of lack of authority and on the principle of double jeopardy, we are of the considered opinion that the learned Single Judge while dismissing the writ petition at the initial stage itself without even calling for the reply, missed the legal issues which arose. Therefore, the impugned order dated 05.05.2017 as such is not sustainable. Resultantly, the same is set aside. It is further to be noticed that the employee in question was born on 20.09.1960 and has already attained the age of superannuation. Keeping in view that he has not worked and on the principle of 'no work no pay' and even counsel for the appellant has also conceded that he does not wish to

press for back wages for the period in question, the Corporation cannot be burdened with wages. Accordingly, we set aside the order of dismissal dated 9/12.04.2012 (Annexure P-4) which has been upheld in appeal on 12.08.2013/04.09.2013 (Annexure P-5) and order dated 08.04.2015 (Annexure P-6) passed on the review (mercy petition). The appellant shall, however, be entitled for the retiral benefits and continuity of service till the age of superannuation.

The appeal is allowed in the above terms.

(G.S. SANDHAWALIA)
JUDGE

22.07.2022
shivani

(VIKAS SURI)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No