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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-18804-1996 (O&M)

Date of Decision: 19.09.2023

DR. BALBIR CHAND

.....Petitioner

V/s.

STATE OF PUNJAB AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA.

Present Mr.Ashok Kumar Nabhewala, Advocate
for the petitioner.

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

SANJEEV PRAKASH SHARMA, J (Oral)

1. The petitioner has preferred this Writ Petition wherein he has made several prayers. However, during the course of arguments, learned counsel for the petitioner does not press the present petition with regard to other prayers except with reference to the punishment of *censure* awarded to him vide order dated 20.06.1984, and with respect to the non-payment of salary other than Subsistence Allowance for which the orders were passed on 20.06.1984 (Annexures P-4 and P-5). The other prayers and impugned orders are not pressed by the learned counsel or the petitioner. The Writ Petition with regard to the same, therefore, is dismissed as not pressed.

2. With reference to the punishment order dated 20.06.1984, learned counsel for the petitioner submits that the petitioner was posted as a Medical Officer at Subsidiary Health Centre, Tehang, District Jalandhar (hereinafter referred to as "SHC"). The Deputy Director, Health Services, Punjab had conducted a surprise inspection of the concerned SHC on 01.12.1983 at 12:30 p.m. and the petitioner was allegedly found absent

from official duty and therefore, he was suspended, and a charge-sheet dated 28.02.1984 under Rule 8 of the Punjab Civil Services (Punishment & Appeal) Rules, 1970 (hereinafter referred as “the Rules”) was issued to him seeking his reply.

3. The petitioner submitted his reply to the charge-sheet and pointed out that he had attended his duty on 01.12.1983 at 9 A.M. and after examining 3-4 patients, at about 12.05 P.M., he proceeded to collect the salary of his staff and instructed the Sweeper to remain at the SHC. The petitioner also submitted his explanation with regard to the not making any entry in the movement register stating that he had to urgently leave as his Scooter was out of order and he has to change 2-3 buses to reach PHC at Barapind and assured that this mistake will not be repeated in future and he would not leave the station without filling duty register in duty hours.

4. The Senior Medical Officer, PHC Barapind also wrote on 20.03.1984 that the petitioner had reached PHC Barapind around 12:30 P.M. to collect salary of the concerned SHC.

5. Learned counsel for the petitioner submits that reply of the petitioner to the charge-sheet was considered and found to be unsatisfactory by the disciplinary authority who proceeded to impose punishment of *censure*. On the same date, vide another order, the salary apart from Subsistence Allowance already paid, was also ordered to be withheld.

6. Learned counsel for the petitioner assails the order and submits that there has been a complete non-application of mind, and there are no reasons coming forward to show as to how the petitioner’s reply can be said to be unsatisfactory. Once the petitioner has submitted that he was present

as on 01.12.1983 at 9 A.M., and as per the statement of allegations, it is mentioned that there are three entries made in the OPD register on that day, at the time of inspection, the fact of petitioner being present at his duty in the morning is proved, and there was no occasion to hold the petitioner to show absent from duty.

7. With regard to the withholding of the Subsistence Allowance, learned counsel for the petitioner submits that since the punishment of *censure* itself is bad in law, the salary apart from Subsistence Allowance, could not have been withheld. He relies on the judgment passed by the apex Court in the case of **B.D. Gupta** Vs. **State of Haryana**; 1973 (3) SCC 149, wherein there are somewhat identical facts to the present Writ Petition. The matter travelled to the Supreme Court and the apex Court has set aside the punishment as well as the order withholding salary apart from Subsistence Allowance.

8. *Per contra* learned State counsel has submitted that petitioner is in reply has stated that on 01.12.1983, he was present at his place of posting and after attending 3-4 patients, he went to PHC Barapind to collect salary of the staff, but the petitioner was found absent and no entry was found in the movement register to prove that at what time he went to PHC Barapind to collect the salary of the staff. Therefore, the reply to the charge-sheet was found unsatisfactory by the concerned disciplinary authority and the punishment has been rightly awarded to the petitioner. Since, the petitioner has been punished under the provisions of Rule 7.3 of the Rules, the petitioner's salary apart from Subsistence Allowance has

been withheld. The representation made by the petitioner was also considered and the same was rejected and conveyed to the petitioner.

9. I have considered the submissions of learned counsel for the parties.

10. In departmental proceedings under the Rules, a charge-sheet was issued under Rule 8 which is made for conducting a regular enquiry where the disciplinary authority feels that a delinquent would be imposed with a major penalty. Whereas, for punishing an employee for a minor penalty, provisions of Rule 10 of the Rules, 1970 would apply wherein a show cause notice is required to be given and after receiving reply, the concerned disciplinary authority may consider the reply and pass an order imposing any of the minor penalties.

11. In the present case, while a charge-sheet was issued to the petitioner under Rule 8 of the Rules, it appears that, after considering the reply, the disciplinary authority has proceeded to impose a punishment of *censure*, a minor penalty.

12. Rule 8(4-A) of the Rules are reproduced as under:-

“Rule 8 (4-A)

If on receipt of written statement of defence, the punishing authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 5 should be imposed on the Government employee and for that reason the punishing authority does not consider it necessary to enquire into the articles of charges for imposing any of the penalties specified in clauses (v to (x) of rule 5, it shall, after following the procedure specified in rule 10, make an order imposing any of the penalties specified in clauses (1) to (iv) of Rule 5.”*

13. A look at Rule 8 (4-A) of the Rules would show that disciplinary authority has powers to examine the reply in terms of Rule 4-A to impose any of the penalties specified in Clause 1 to 4 of Rule 5 that is for Minor Penalties and may not proceed further for the complete detailed enquiry.

14. Thus, it cannot be said that the disciplinary authority has, in any manner, disregarded or transgressed the provisions under the Rules and impose a minor penalty while initiating proceedings for major penalty.

15. The question arises whether the punishment of *censure* awarded to the petitioner and for the purpose, whether the disciplinary authority had applied its mind before reaching to a conclusion that the explanation of the petitioner to the show cause notice was unsatisfactory.

16. This Court notices that in the reply filed to the charge sheet, as quoted above, the petitioner has accepted his mistake for not making entry in the movement register. He also states that he will not repeat the said mistake in future and that he will not leave the station without filling the movement register during duty hours.

17. Thus, from above, this Court finds that while the petitioner may not have been absent from duty for which if the disciplinary authority would have continued enquiry for a major penalty, the authority found that the explanation with regard to not making entries in the register is a minor mistake and the explanation was unsatisfactory that he would not do it in future and imposed a punishment of *censure*.

18. In the case of **B.D. Gupta** Vs. **State of Haryana**; 1973 (3) SCC 149, the apex Court has held as under:-

“10. We were told that since the appellant was aware of the charge and also aware of the reply he had given to the charges made against him, it was enough for Government to tell him that his answer was unsatisfactory. It was argued that since the "Show Cause notice" really pointed this out and mentioned that the very lenient sentence of censure upon the appellant's conduct was, going to be imposed, there was nothing further that Government could be expected to do in this case. We have no hesitation in rejecting this contention made out on behalf of the State. It is, manifestly clear that the "Show Cause notice" was too vague to permit the appellant to deal with, it effectively and that consequently the order of censure passed on him is bad and liable to be struck down.”

19. It is a settled law that this Court will not substitute its opinion to that of the disciplinary authority. The only aspects, which this Court would examine in departmental enquiry, are with regard to whether the concerned disciplinary authority has followed the principles of law which has been laid down and governed by the departmental proceedings in the Supreme Court in the case of Union of India and others Vs. P. Gunasekaran; 2015(2) SCC 610 held as follows:-

“13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under [Article 226/227](#) of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;

- b. *the enquiry is held according to the procedure prescribed in that behalf;*
- c. *there is violation of the principles of natural justice in conducting the proceedings;*
- d. *the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. *the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;*
- f. *the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. *the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. *the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*
- i. *the finding of fact is based on no evidence.*

Under [Article 226/227](#) of the Constitution of India, the High Court shall not:

- (i) *re-appreciate the evidence;*
- (ii) *interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;*
- (iii) *go into the adequacy of the evidence;*
- (iv) *go into the reliability of the evidence;*
- (v) *interfere, if there be some legal evidence on which findings can be based.*
- (vi) *correct the error of fact however grave it may appear to be;*
- (vii) *go into the proportionality of punishment unless it shocks its conscience.”*

20. The aforesaid view has been reiterated by three Judges’ bench in the case of **Central Industrial Security Force and Others** VS. **Abrar Ali**; 2017 (4) SCC 507.

21. Keeping in view the above, this Court finds that the scope for interference is wholly limited and in the present case, there is no scope available for this Court to interfere and substitute the opinion to the opinion arrived at by the disciplinary authority.

22. The judgment cited by the learned counsel for the petitioner has on its own facts and would not have a general application in the present case keeping in view the recent three judges Bench judgment of the apex Court as above.

23. In view of the above law, punishment awarded to the petitioner does not warrant interference.

24. Keeping in view the above provisions, if a person has been held guilty of charges, even to a certain extent, the disciplinary authority has a right to withhold salary apart from the subsistence during the suspension period. Similar provision is available under Rule 5 of the Rules.

25. In view of above, no interference to the order of withholding salary apart from subsistence allowance is warranted. The Writ Petition fails and is accordingly **dismissed**.

26. All pending applications in this Writ Petition shall stand disposed accordingly.

September 19, 2023

Ess Kay

[SANJEEV PRAKASH SHARMA]

JUDGE

Whether speaking / reasoned : *Yes/No.*

Whether Reportable : *Yes/No*