

128 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.4167 of 2023 (O&M)
Date of decision : 01.03.2023

Ashwani Kumar

..... Petitioner

versus

Punjab State Warehousing Corporation & anr.

..... Respondents

CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN

Present :- Mr. J.P.Rana, Advocate
for the petitioner.

Mr. Rajesh Mehta, Addl. A.G., Punjab.

Mr. Tahaf Bains, Advocate
for respondent No.4.

PANKAJ JAIN, J. (ORAL)

The petitioner herein impugnes the order dated 22.12.2022 (Annexure P-10) passed by the appellate authority whereby the appeal preferred by the petitioner stands rejected and the order dated 06.04.2022 (Annexure P-8) passed by the punishing authority imposing the punishment of recovery of Rs.16,46,936/- has been imposed upon the petitioner. The petitioner was working as Technical Assistant at State Warehouse, PSWC, Faridkot-2 was issued a charge-sheet dated 08.09.2015. The same led to inquiry proceedings. Admittedly in the inquiry the petitioner was exonerated, however, the punishing authority recorded a dissenting note. The same was served upon the petitioner along with the show cause notice dated 27.01.2020. The petitioner responded to the same which led to order of punishment dated 24.02.2022 (Annexure P-7). The petitioner preferred departmental appeal against that, which now stands

dismissed vide order dated 22.12.2022 impugned in the present writ petition.

Learned counsel for the petitioner has emphatically argued that while dealing with the inquiry report, the punishing authority ought to have complied with Rule 9 (1), 9 (2) of the Punishment & Appeal Rules, 1970 (for short the 1970 Rules). However, while recording the dissenting note no dissent/disagreement and findings have been recorded on each of the charge, resultantly the dissenting note being not as per Rule 9 could not have been acted upon. He further submits that even the appellate authority has not dealt with the pleas raised by the petitioner in his departmental appeal and without recording any reason has concluded the appeal against the petitioner. Further reliance is being placed upon notice of motion order issued by this Court in CWP No.8932 of 2020 titled as ***Ankur Garg Vs. Punjab State Warehousing Corporation (PSWC) and another*** to contend that this Court has already ceased of the similar controversy pertaining to other employees and thus the petitioner deserves similar treatment.

I have heard learned counsel for the petitioner and have gone through the records of the case.

The dispute relates to dissenting note recorded by the punishing authority which reads as under :-

“State Warehouse Faridkot-2 was charge sheeted vide Memo. dated 08.09.15 as under:-

"That he deposited late documents of delivery of wheat specials loaded during financial year 14-15 from State Warehouse Faridkot - 2, as a result of which Corporation suffered interest loss of Rs.16,46,936/- for which you are responsible"

To know the truth of this case departmental enquiry was entrusted to Sh. MS Rattu Additional District and Session Judge (Retired) vide orders dated 20.11.15. In the enquiry report dated 28.12.16 submitted by the Enquiry Officer, the Charges levelled in the Charge Sheet was stated to have not been proved on the ground that there was shortage of staff at Faridkot -2 Centre and this official in addition to his own work was also performing additional duty. But on the basis of the reports sent by Distt Manager Faridkot vide his letter No. PWC/Faridkot/DM/Ad-2/1388 dated 15.06.17 and No.3255 dated 13.09.19 it becomes clear that while submitting his enquiry report the Enquiry Officer has overlooked the following facts: -

- 1) Sh. Ashwini Kumar TA remained posted at State Warehouse Faridkot -2 from 19.04.14 to 11.03.15*
- 2) Along with him Sh. Jaipal GA, Sh. Charanjit Singh DO, Gurdeep Singh DO Sh. Gurjant Singh helper and Jaswinder Singh helper were also posted.*
- 3) In addition to this in this case mostly the deliveries of wheat had not taken place during the procurement season.*

From the above it becomes clear that Sh. Ashwini Kumar TA was not serious towards his duties and therefore he is responsible for the financial loss of Rs.16,46,936 /-caused to the Corporation on account of delay in submission of dispatch documents of wheat specials of crop year 2014 - 15 loaded from State Warehouse Faridkot.”

The issue raised by the learned counsel for the petitioner is that the same is not as per Rule 9 of the 1970 Rules. The charge-sheet issued to the petitioner would reveal that there was only one charge for which the petitioner was proceeded against which reads as under :-

"That you deposited late documents of delivery of wheat specials loaded during 14-15 from State Warehouse Faridkot - 2, as a result of which Corporation suffered interest loss of Rs. 16,46,936/- for which you are responsible"

While recording finding thereon, the inquiry officer held as under :-

“It is clear that in the absence of the staff CO was doing extra work in

addition to his duty. This shows that he was sincere to his job and there was no lapse on his part. If there is any delay for depositing the document it was due to the shortage of staff which was well within the knowledge of the senior officials and no efforts have been made by the officials to fill the vacancies even after receiving the letters sent by the CO which are on the record.”

Thus there was only one charge for which the petitioner was charged and finding was recorded by the inquiry Officer. The same has been well dealt by the punishing authority in its dissenting note. There is no denial to the fact that the said dissenting note was served upon the petitioner and he was granted an opportunity to respond to the same. Thus the plea raised by the petitioner *vis-a-vis* violation of Rule 9 of the 1970 Rules is misplaced and sans merit and is thus rejected. So far as the plea with respect to order passed by the appellate authority being non-speaking is concerned, the appellate authority recorded the following findings :-

“To decide the fate of the appeal the appellant namely Sh. Ashwani J Kumar TA was afforded an opportunity of personal hearing on 07.09.22 and the appellant during the course of hearing retreated the points already mentioned at the time of filing appeal. The appellant submitted that the 72 hours given for submissions of documents to the Distt office after getting the same signed from the FCI are insufficient as the documents are not signed by the FCI staff on holidays. He further submitted that there was shortage of trained staff at the centre during that period and despite verbal and written requests made by him the department did not bother about the same and no proper staff was deputed.

I have gone through the punishment order as well as submissions advanced by the appellant and worked out the following points:-

- 1. In case FCI did not sign the wheat dispatch documents for realization of payment then the appellants should have brought this matter to the notice of the higher authorities or district office but the appellant has failed to bring any document on record to prove this fact.*
- 2. The appellant submitted wheat dispatch documents in distt office Faridkot for further realization of payment from the FCI after an*

abnormal delay of 5 to 53 days whereas as per standard instructions the documents are to be submitted in concerned distt office within 72 hours of the loading of the specials.

3. *The appellant had delayed the submission of dispatch documents in 32 dispatch cases from the period 19.04.14 to 10.3.15 which shows negligence on his part in performing his duties diligently.*
4. *It has further been observed that maximum dispatches are not in any of the procurement season.*
5. *The appellant had taken the ground of shortage of staff at the Centre during that period whereas record shows that sufficient staff was posted at that time at the Centre and being in charge of the centre it was the prime responsibility /duty to get the things done from other staff members in case he was busy in some official activities.*
6. *In view if the facts circumstances and grounds above the undersigned agrees with the decision taken by the Corporation to hold Shri Ashwani Kumar TA responsible for causing financial loss of Rs.16,46,936/- to PSWC due to late submission of wheat dispatch documents to FCI. As such the undersigned thereby dismissed the appeal filed by Shri Ashwani Kumar TA appellant and uphold the impugned order.”*

Thus this Court does not find that the order passed by the appellate authority is deficient. Appellate authority has fully dealt with the pleas raised by the petitioner and have recorded reasons and findings to dispel the same.

So far as law with respect to jurisdiction of this Court under Article 226/227 of the Constitution of India to interfere in the disciplinary proceedings is concerned, the same is well culled out by the Apex Court in ***State of Karnataka & anr. Vs. Umesh, (2022)6 SCC 563*** wherein it has been held as under :-

“17. In the exercise of judicial review, the Court does not act as an appellate forum over the findings of the disciplinary authority. The court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether: (i) the rules of natural justice have been complied with; (ii) the finding of misconduct is based on some evidence; (iii) the statutory rules governing the conduct of

the disciplinary enquiry have been observed; and (iv) whether the findings of the disciplinary authority suffer from perversity; and (vi) the penalty is disproportionate to the proven misconduct.”

Resultantly, this Court does not find any merit in the present writ petition and the same is ordered to be dismissed.

(PANKAJ JAIN)
JUDGE

01.03.2023
Pooja sharma-I

Whether speaking/reasoned	Yes
Whether Reportable :	No