

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

101

**RSA-98-1991(O&M)
Date of decision: 30.10.2023**

M/S NATIONAL FERTILIZERS LIMITED AND OTHERS

..Appellants

Versus

BALWANT SINGH & ORS.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vipin Mahajan, Advocate
for the appellants.

ANIL KSHETARPAL, J(Oral)

1. The defendant (employer) challenges the correctness of the order passed by the First Appellate Court while reversing the judgment and decree passed by the trial Court. A joint civil suit was filed by as many as 13 employees out of which some of the plaintiffs were represented by their legal heirs. The various punishment orders passed by the appellant (employer) reducing the rank of the employees or in other words reverting them from the post held were made the subject matter of challenge in the said civil suit. In substance, all the employees were penalized by the competent authority for having claimed the amount by submitting bogus traveling allowances bill during leave travel concession (LTC). Pursuant to the charge sheet, all the plaintiffs admitted their guilt, however, they sought leniency on the ground that these bills were filed as some other employees instigated them. The departmental inquiry was held and the separate punishment order was passed in the year 1978. These employees did not file the appeal within the prescribed time, however, they made a representation

to the Chairman in the year 1979 for review of the punishment order on the ground that they have been discriminated by the disciplinary authority while ordering punishment. Their representation was rejected by the Chairman. The civil suit filed by them was dismissed while recording the following findings:-

“13. In my opinion, all and atleast most of the grounds on which the impugned orders have been challenged are redundant. It has been stated by DW 1 Shri M.L. Puri, who was one of the members of the enquiry committee, that in the first instance charge sheets were served on the plaintiffs and others. All the employees submitted their replies to the charge sheets. All the plaintiffs admitted their guilt in their replies which are Exs.D1 to D13. Two other officials namely Dharamvir and Mr. Mehrotra did not admit their guilt and that is why the enquiry had to be conducted. All the officials were given opportunity to defend themselves and all the witnesses were examined in their presence. The plaintiffs were also examined in the enquiry and in that examination also they admitted their guilt.

14. DW1 Shri M.L. Puri was not cross-examined on the point that charge sheets were served on the plaintiffs. Plaintiff Satpal Singh in his cross-examination has admitted that charge sheets were duly served on all the plaintiffs. He has also admitted that replies Exs.D1 to D13 were submitted by all the plaintiffs to the charge sheets. The plaintiffs have not taken the stand that these replies were procured from them by the Management of the defendant No.1 by fraud coercion or by any other undue means. These are, therefore, voluntary replies of the plaintiffs. In his reply Ex.D1 plaintiff Balwant Singh admitted his fault though he stated that he was a victim of the conspiracy hatched by a group of persons. He sought pardon. Plaintiff Agya Singh in his reply Ex.D2 also admitted his fault. In his reply Ex.D3 plaintiff Sat Ram Dass also owned the charges levelled against him in the charge sheet though he attributed his lapse to the devious methods of Dharamvir and Mohan Lal, who according to him prevailed upon him to sign bogus L.T.C. papers. Plaintiff Gurmit Singh in his reply Ex.D4 admitted his guilt but attributed it to a conspiracy hatched by a group of persons including Mohan Lal. Plaintiff Kesar Singh in his reply Ex.D5 also admitted his guilt un-conditionally. Plaintiff Satpal Singh also admitted his fault vide reply Ex.D6 and so did plaintiff Atma Ram vide his reply

Ex.D7. Reply of plaintiff Kundan Lal Ex.D8 is also similar. Plaintiff Chaman Lal in his reply Ex.D9 attributed the entire episode to the machinations of one Mohan Lal and sought forgiveness. Plaintiff Kishan Chand submitted a long explanation running into 20 pages which is Ex.D10 and admitted his guilt. Plaintiff Harbans Singh in his reply Ex.D11 to the charge sheet also owned the charges but prayed for lenient view. The reply of plaintiff Roshan Lal Ex.D12 is that of unqualified apology and of prayer for mercy. Reply of plaintiff Mangat Ram Ex.D13 is to the effect that he was involved in the affair by his colleague Dharamvir who played a confidence trick on him. He stated that he was a victim of the conspiracy and prayed for mercy.

15. There are then the statements of the plaintiffs recorded during enquiry which are Exs.D14 to D24. Point was raised by the Ld. counsel for the plaintiffs that these statements do not bear the signatures of the plaintiffs but this argument cannot be accepted because DW1 Shri M.L. Puri, one of the members of the enquiry committee, who has proved these statements was not cross-examined on this point. In these statement also plaintiffs admitted the charges levelled against them.

16. Therefore, from the aforesaid discussion, it is clear that the enquiry had to be conducted on account of denial of the charges levelled against them by two other officials namely Dharamvir and Mr. Mehrotra. No enquiry was needed against the plaintiffs on account of admission of the guilt by them. As can be gathered from the pleadings and evidence led in the case, what the plaintiffs were charged with was the submission of bogus T.A. bills of L.T.C., without performing the actual journeys. The plaintiffs shared the booty of the bogus T.A. bills with Dharamvir and Mr. Mehrotra, ring-leaders of the racket. Dharamvir has since been discharged from service. The plaintiffs took the stand in their replies that they were not active participants in the racket but were prevailed upon to claim amounts of bogus journeys by the aforesaid two officials and it appears that it is on account of this explanation accepted by the Punishing Authority that instead of dismissal, the plaintiffs were awarded the punishment of reversion to a lower ranks. In my opinion, therefore, on one of the grounds taken in the plaint, the orders in question can be said to violate either the service rules/conditions of the plaintiffs or the principles of natural justice.”

2. On the aspect of failure to file the service appeal, the trial Court held as under:-

“21. I would now come to the so-called order of appeal dated 19/20.9.1979 Ex.P2. By no stretch of imagination can this order be called an order in appeal. Under Certified Standing Order No.41(g), an appeal could be filed to the Managing Director within two weeks of the order imposing the penalty. Impugned orders in case of one plaintiff were passed on 21.10.1978, in the case of six plaintiffs these were passed on 23.10.1978, in the case of one plaintiff on 22.9.1978, in the case of two plaintiffs on 26.10.1978 and in the case of three plaintiffs on 28.10.1978. Therefore, appeal against these orders could be filed only within 15 days of these orders. On the other hand, the so-called appeal Ex.P1 was sent not to the General Manager of the Nangal Unit of the National Fertilizers Limited, who was the Appellate Authority but to the Chairman and Managing Director of the National Fertilizers Limited, Head Office at New Delhi with a copy to the General Manager of the Nangal Unit. This was also sent on 24.06.1979, much beyond the period of limitation. In it not a single ground for assailing the validity of the impugned orders of Punishment was taken but what was mentioned was that some other employees had been dealt with a leniently. Prayer was made to review the punishments already awarded in the name of fair play and justice. Vide order Ex.P2 dated 19/20.9.79, this application was considered and request for review of the punishments was declined with the observation that the cases of the plaintiffs for promotion shall be considered after one year alongwith other similar cases. Therefore, since Ex.P1 was not an appeal strictly in accordance with the provisions of the Certified Standing Orders, any order passed thereon cannot be said to be an order passed in appeal, with the result that order Ex.P2 cannot be said to be such an order under the provisions of the Certified Standing Orders, the validity whereof can be challenged as of right in a Court of law.”

3. Out of the 13 employees, only 4 filed the appeal. Subsequently, one of the plaintiffs' withdrew the appeal. The First Appellate Court has set aside the judgment and decree passed by the trial Court as well as the order of punishment on the ground that the inquiry report submitted by the Committee has not been placed on the file and the same was not supplied to the employees before passing the order of punishment.

4. In this appeal, the respondents have chosen not to enter appearance despite the publication of notice in the newspaper. The learned counsel representing the appellant submits that the judgment in **Union of India and others Vs. Mohd. Ramzan Khan, 1991 (1) SCC 588**, was passed later than the impugned orders punishing the plaintiffs were passed. He further submits that all the three contesting respondents have retired between 1991 to 1994. He submits that the plaintiffs have failed to prove any prejudice caused to them. He submits that now at this stage, the appellant cannot be made to pay the amount because the operation of the judgment and decree passed by the First Appellate Court was stayed in the year 1991 and the respondents worked on a lower post and they received the salary accordingly, and have since retired.

5. This Court has considered the submissions of the learned counsel representing the appellant.

6. It is evident that all the plaintiffs admitted their fault in the separate reply filed by them pursuant to the charge sheet. Most of the plaintiffs appeared in the Court and admitted their guilt. In the peculiar circumstances of the present case, conducting an inquiry was not necessary. Moreover, the plaintiffs could have summoned the inquiry report if they wished to challenge its correctness. The plaintiffs are required to stand on their own legs. Moreover, it is evident that the plaintiffs did not file the appeal as provided under certified standing order no.41(g). They merely submitted a representation and that also after a long delay. In these circumstances, the plaintiffs have failed to avail the opportunity to file the appeal against the orders of punishment. Now, a period of 45 years has

elapsed since the order of punishment was passed. In the meantime, the respondents have continued to work on the reverted post all this while and have retired approximately 30 years ago.

7. At this stage, it would not appropriate to direct the appellant to pay the benefit flowing to the employees on the basis of the judgment passed by the First Appellate Court.

8. Consequently, the judgment of the First Appellate Court is modified in the peculiar facts of the case and the matter is directed to be closed while observing that the respondents shall not be entitled to file any execution petition on the basis of the impugned judgment.

9. With these observation, the present appeal is disposed of.

10. All the pending miscellaneous applications, if any, are also disposed of.

October 30th, 2023

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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No